



THE COMMONWEALTH OF MASSACHUSETTS  
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November 10, 2020

OML 2020 – 144

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Springfield, MA 01144-1900

By e-mail only: [jtimme@dwpm.com](mailto:jtimme@dwpm.com)

**RE: Open Meeting Law Complaint**

Dear Attorney Belcher-Timme:

This office received a complaint from Rebecca Townsend on July 23, 2020, alleging that the Longmeadow Board of Health (the “Board”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.<sup>1</sup> The complaint was originally filed with the Board on June 25, and you responded, on behalf of the Board, by letter dated July 23.<sup>2</sup> The complaint alleges that the Board improperly deliberated by email outside of a noticed meeting.

We resolve this complaint by **informal action** in accordance with 940 CMR 29.07(2)(a), after reviewing the original complaint, the Board’s response to the complaint, the complaint filed with our office requesting further review, the notices and open session minutes of the Board meetings held on June 3 and June 11 meetings, and the June 10 email correspondence. We find that the Board violated the Open Meeting Law in the way alleged.

The Open Meeting Law was enacted “to eliminate much of the secrecy surrounding deliberation and decisions on which public policy is based.” Ghiglione v. School Board of Southbridge, 376 Mass. 70, 72 (1978). The Open Meeting 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. A “meeting” is defined, in relevant part, as “a

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<sup>1</sup> All dates in this letter refer to the year 2020.

<sup>2</sup> We remind the Board that the Open Meeting Law requires that within 14 business days of receipt of a complaint, the public body must meet to review the complaint’s allegations; take remedial action, if appropriate; send to the complainant a response and a description of any remedial action taken; 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).

deliberation by a public body with respect to any matter within the body's jurisdiction." G.L. c. 30A, § 18. The law defines "deliberation" 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; provided, however, that 'deliberation' shall not include the distribution of other procedural meeting [sic] or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed." Id. For the purposes of the Open Meeting Law, a "quorum" is a simple majority of the members of a public body. Id.

During a June 3 meeting, the Board discussed a proposal to share public health services with the Town of East Longmeadow and reviewed proposed protocol for holding a Town Meeting during the current COVID-19 pandemic. The Board did not vote on either proposal and tabled further discussion on each topic until its next meeting on June 11. The meeting minutes state that the Health Director "will accept all BOH members new questions and compile them."

After the June 3 meeting, three out of five Board members individually submitted to Health Director Beverly Hirschhorn their thoughts and specific recommendations on whether to hold a Town Meeting, while four out of five Board members individually submitted to Health Director Hirschhorn their thoughts and concerns on the proposed shared public health services plan. Health Director Hirschhorn combined all of the comments and opinions into one document and emailed that document to the Board on June 10; each comment listed in the document was attributed to a specific Board member. The Board then met on June 11 and discussed the proposal to share public health services with East Longmeadow, including staffing and operational costs, and voted to proceed with holding a Town Meeting as long as the meeting was held outdoors and followed all social distancing and face covering requirements.

The complaint alleges that the Board deliberated by email on June 10 outside of a properly posted meeting. Here, the June 10 email was sent to all Board members and contained the thoughts and opinions of a quorum of members on two matters that had previously been discussed by the Board and were still pending before it. The expression of an opinion of one public body member on matters within the body's jurisdiction to a quorum of a public body is a deliberation, even if no other public body member responds. See OML 2016-104; OML 2015-33.<sup>3</sup> The fact that the email was sent by the Health Director, who is not a member of the Board or otherwise subject to the Open Meeting Law, does not change our conclusion that it contained improper content which should have been saved for discussion at a meeting. See OML 2017-69. A public body may not use a non-member, such as a staff member, to facilitate a deliberation or communicate on matters that the Board would otherwise be required to save for discussion at an open meeting. See OML 2016-31; OML 2014-51; OML 2013-186.

We find that the June 10 email violated the Open Meeting Law because the email reached a quorum of the Board, discussed two matters which were still pending before the Board and within the Board's jurisdiction, and offered the members' opinions on how the matters should be handled going forward. See OML 2015-3; OML 2014-108; OML 2013-136; Boelter v. Board of Selectmen of Wayland, 479 Mass. 233, 243 (2018). We order immediate and future compliance

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<sup>3</sup> Open Meeting Law determinations may be found at the Attorney General's website, <https://www.mass.gov/the-open-meeting-law>.

with the law's requirements, and we caution that similar future violations could be considered evidence of intent to violate the law. In addition, we order the Board to publicly disclose the June 10 email at its next meeting.<sup>4</sup>

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 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: Rebecca Townsend – By e-mail only: [rtownsend@longmeadow.org](mailto:rtownsend@longmeadow.org)  
Longmeadow Board of Health c/o Health Director Beverly S. Hirschhorn –  
By e-mail only: [bhirschhorn@longmeadow.org](mailto:bhirschhorn@longmeadow.org)

**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.**

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<sup>4</sup> The Board must notify the Attorney General in writing of its compliance with the order to publicly disclose the email communication within 30 days of receipt of this letter. See 940 CMR 29.07(4).