

Recent Open Meeting Law Decisions

Prepared for the January 2024 MMA Business Meeting and Trade Show

This eUpdate focuses on recent decisions of the Attorney General on Open Meeting Law complaints. While these areas may be familiar, their recent emphasis by the Division of Open Government merits further consideration.

I. OML-2023-101. Hanson Board of Health

A matter was discussed at an open meeting that did not appear on the meeting notice. The Attorney General found a violation, noting that the matter could have been reasonably anticipated based upon the Board's assistant's correspondence about the matter. The Attorney General indicated, "Where the chair delegates to another person responsibility for creating the meeting notice, we look to what that person anticipated would be discussed 48 hours prior to the meeting."

II. OML-2023-156. Malden City Council

Considering the situation where the Council Chair deactivated a City-hosted zoom link, and then required a Councilor to deactivate a privately hosted zoom link, the Attorney General found that the Chair had violated the Open Meeting Law. The Open Meeting Law states that after notifying the Chair, "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 subject to reasonable requirements of the chair..." This language broadly allows streaming of open meetings, whether through Zoom, Facebook live or any other streaming service, following notice to the chair.

III. OML-2023-205. Wayland School Committee

The Attorney General concluded that the unavailability of a Purpose 1 subject's attorney on the date of a scheduled executive session did not prevent the subject from having access to counsel of his choice. This conclusion is consistent with the Attorney General's position that the Open Meeting Law does not require a public body to accommodate the schedule of a Purpose 1 subject or the subject's attorney when scheduling an executive session. Nevertheless, the Attorney General recommends that efforts be made to accommodate when possible.

Responding to a complaint that the meeting location was updated within the 48-hour posting period, the Attorney General states that a public body "is permitted to change its meeting location, even less than 48 hours prior to a meeting as long as it makes reasonable efforts to notify the public of the new location." The Attorney General takes the position that if a public body has reason to believe a large turn-out will occur, "the body should make reasonable efforts to accommodate the larger crowd, including by moving the meeting location if necessary."

IV. OML-2023-225. Townsend Board of Health

Responding to a complaint that a telephone connection provided as a courtesy to access an in-person meeting was not effective due to music being played, the Attorney General confirms that while a public body may provide remote access to meetings, it is not *required* to do so, provided that the meeting is held in-person “at a location that is open and physically accessible to the public.”

The Attorney General will not take jurisdiction over an allegation of unprofessional conduct or incivility toward a member of the public.

Considering whether a vote was needed to “dismiss” an item from the agenda, the Attorney General confirms that no such vote is necessary. Instead, the Attorney General states the “Open Meeting Law does not prohibit a public body from removing, postponing or declining to address a topic listed on a meeting notice.”

V. OML- 2023-230. Billerica Select Board

The Attorney General found, in response to a complaint that a meeting notice item stating “Set Date and vote for a Special Town Election – Town Center Referendum Petition” was appropriate for discussion of “whether [the board would] schedule a special election and related topics such as the sufficiency of the underlying petition....” The Attorney General reminds us, “The Open Meeting Law does not require public bodies to list all tangential topics related to a discussion nor does the law require a public body to anticipate the course of deliberation or the outcome of a discussion.”

The complaint also alleges that members of the public were not permitted to speak at the meeting. The Attorney General found that the Open Meeting Law does not require a public body to allow participation, so that even if the allegations were true, they did not implicate the Open Meeting Law.

VI. OML-2023-232. Hanson Planning Board

Responding to a complaint that a meeting notice did not provide sufficient specificity with regard to an individual to be discussed under Purpose 1, the Attorney General’s office reminds us that it is permitted that the name of the individual be withheld to protect privacy interests. Importantly, the Attorney General also noted, “The Open Meeting Law does not require that a public body note on the meeting notice or state in the announcement the reason identifying information has been withheld, although that may be helpful.”

For further information, please contact your KP Law attorney at 617.556.0007 with questions or contact Attorney Lauren F. Goldberg (lgoldberg@k-law.com).

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