

2020 Mass. Op. Atty. Gen. No. 139 (Mass.A.G.), 2020 WL 6530771

Office of the Attorney General

Commonwealth of Massachusetts

Opinion No. OML 2020 - 139

October 30, 2020

**RE: Open Meeting Law Complaint**

\*1 Lauren Goldberg, Esq.

KP Law

101 Arch Street

Boston MA 02110

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Dear Attorney Goldberg:

This office received a complaint from Owen Murphy on May 26, 2020, alleging that the Weston Select Board (the “Board”) violated the Open Meeting Law, [G.L. c. 30A, §§ 18-25](#). The complaint was originally filed with the Board on March 24, and the Board discussed the complaint at an April 21 meeting. You responded on behalf of the Board by letter dated June 8.<sup>1</sup> In his complaint, Mr. Murphy alleges that a quorum of the Board deliberated outside of a posted meeting via social media.

We resolve this complaint by **informal action** in accordance with 940 CMR 29.07(2)(a), and find that the Board did not violate the Open Meeting Law as alleged. 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 deliberation by a public body with respect to any matter within the body's jurisdiction.” [G.L. c. 30A, § 18](#). For the purposes of the Open Meeting Law, a “quorum” is a simple majority of the members of a public body. Id.

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 a meeting agenda, scheduling information or distribution of other procedural meeting [sic] or the distribution of reports or documents that may be discussed at a meeting, provided than no opinion of a member is expressed.” Id. The expression of an opinion by 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; OML 2012-73.

The Open Meeting Law does not restrict an individual's right to make comments to the general public, including through social media. See OML 2017-111.<sup>2</sup> However, if a member of a public body were to communicate directly with a quorum of the public body on a matter within the public body's jurisdiction through social media, such communication may violate the Open Meeting Law. See OML 2017-192. Posting in a Facebook group that includes a quorum of members of a public body is not in and of itself a violation of the Open Meeting Law. See OML 2018-145, OML 2017-111. However, public body members should use particular care to avoid deliberation when writing a post that may be visible to other members of the public body, especially in a “closed” Facebook group and in particular if the closed group is relatively small. See OML 2018-153. In order to differentiate between social media posts that are directed to the public and those that are directed to other members of the public body, we must examine the communicator's intent. See OML 2017-111; OML 2015-15.

\*2 Here, on February 22, a member of the public started a conversation in a large Weston-themed Facebook group by posting a newspaper article about a prior Open Meeting Law determination. The Facebook group had 2,742 members and many members of the public responded to the original post. In response to a constituent's comment, Selectman Boshart made a comment regarding a Weston development project's effect on abutters. Several members of the public raised other concerns about the development project and Selectman Boshart explained his views on the matter. Other members of the public raised issues with another development project and concerns about the recent Open Meeting Law determination. Selectman Boshart replied to these comments regarding prior actions taken by the Board and the content of the Open Meeting Law determination. Although these posts by Selectman Boshart related to Board business, the posts were clearly directed to members of the public within the large Facebook group, and as no other members of the Board responded, we find that these posts did not violate the Open Meeting Law.

Starting a separate comment thread, and not in response to Selectman Boshart, Selectman Houston expressed his enthusiasm for discussing the Open Meeting Law determination as the first topic on the Board's agenda for its next meeting. A member of the public responded that sometimes Board meetings run very late. Selectmen Boshart joked in reply that “9:45 is way past my bedtime” and Selectman Houston responded “I wish much more than you do (and my family wishes even more than I do) that we weren't having to schedule agenda items so late and that we were also able to stay right on schedule.” Even though two Selectmen, a quorum of the Board, responded to each other in this exchange, the topic had to do with scheduling of a meeting. We find that these comments fall within the Open Meeting Law's exemption to the definition of deliberation for ““scheduling information.”” See G.L. c. 30A, § 18. We therefore find no violation of 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 Board. Please feel free to contact the Division at (617) 963 - 2540 if you have any questions.

Sincerely,

Sarah (Chase) Monahan  
Assistant Attorney General  
Division of Open Government

#### Footnotes

- 1 Unless otherwise specified, all dates refer to 2020.
- 2 All previous determinations issued by the Division can be found on the Attorney General's website: <https://www.mass.gov/the-open-meeting-law>.

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