

SELECT BOARD MEETING MINUTES
Thursday, July 11, 2019
6:30 p.m.
TOWN OFFICES, 50 MAIN STREET

Present:

Terry Flynn, Chuck Cardillo, and Roxanne McCaffrey

Call to Order:

Terry called the meeting to order.

Agenda:

Terry read into the record Town Counsel's response to the Open Meeting Law Complaint as copied below:

Ernest Cardillo
7A East Street
Stockbridge, MA. 01262

Re: June 24, 2019 *Open Meeting Law* Complaint

Dear Chuck:

The Stockbridge Select Board met in executive session on Tuesday, July 2, to consider your *Open Meeting Law* (OML) complaint, received on June 24. During that executive session, the Board directed me to provide you with a response to that complaint.

Although your complaint generally references "collusion between board members outside of our proper meeting times and persistent attempts to circumvent the proper procedures of office," your complaint identifies only two alleged instances in which the Select Board violated the law: (1) a voicemail left on your telephone by Select Board Chair Terry Flynn on June 6; and (2) a deliberation during the Select Board's executive session of June 12 that, in your view, went beyond the executive session's posted purpose. See OML Determination 2019-1 (the Attorney General's "office will not conduct broad audits of public bodies based on generalized allegations.").

Your complaint centers around decisions the Select Board made about the Highway Superintendent's contract and compensation. The history of this matter goes back at least to an executive session of the Select Board, held on March 28, 2018. According to the minutes of that meeting, the Select Board decided to offer the Highway Superintendent an employment contract. The Superintendent had previously requested a pay increase of \$3.50/hour, but no action was taken by the Board on that request at that time.

On May 9, 2018, the Select Board met with the Highway Superintendent in executive session to conduct contract negotiations. The parties reviewed a draft of a proposed contract, but that draft did not specify a salary figure. Nevertheless, the budget approved by Town Meeting on May 21, 2018 included sufficient funding for a \$3.50/hour raise, in case that amount was ultimately negotiated.

On June 19, 2018, the Select Board again met with the Highway Superintendent in executive session to continue contract negotiations. The minutes of that executive session indicate that the Select Board voted to offer the Superintendent a contract with the \$70,073 salary, which represents an increase of \$2.00/hour, with the understanding that, after a performance evaluation he could potentially get an additional \$1.50/hour increase to \$73,279.

The Superintendent ultimately rejected the contract offer, and his salary for Fiscal Year 2019 was therefore set at \$65,920, the same as for the prior Fiscal Year. It is the Select Board's understanding that the contract was rejected because it did not provide for overtime pay for snowplowing, a position that the prior Chair presented as non-negotiable.

As the Fiscal Year neared its end, the Highway Superintendent had separate conversations with Terry Flynn and newly elected Select Board member Roxanne McCaffrey about his contract. These separate conversations included discussions about the Town Meeting vote, which the Highway Superintendent (incorrectly) characterized as having

been a vote for a \$3.50/hour raise. Terry and Roxanne separately told him that, if Town Meeting had indeed voted a \$3.50/hour raise, it should be granted. In those conversations, the Highway Superintendent informed each of them about the other's opinion. Based on this information, Terry called and left the voicemail that is one of the subjects of your complaint, stating his intent to give the Highway Superintendent a \$3.50/hour raise. The Board agrees that the voicemail constituted a deliberation involving two members of the Select Board (a quorum), and thus was prohibited by the *Open Meeting Law*.

After the call, Terry spoke to the Town Administrator and Town Counsel and, based on those conversations, decided that the best path forward would be to schedule a new executive session, to discuss strategy with respect to contract negotiations with the Highway Superintendent. *M.G.L. c.30A, §21(a)(2).1* That executive session was held on June 12, 2019, and is the second subject of your complaint.

The minutes of the executive session have not yet been submitted to the Select Board for approval but, according to the Town Administrator's notes and a review of the audio recording:

Roxanne moved to retroactively set the salary for [the Highway Superintendent] at \$70,073 for FY 19 as of July 1, 2018 for the purpose of potential contract negotiations. Chuckie seconded the motion the vote was roll call unanimous.

Thus, you appear to have agreed with Terry and Roxanne's understanding that the \$2.00/hour raise would be paid right away while the details of a future contract would be negotiated in a timely manner.

Based on the foregoing, the Select Board does not agree that "the contract discussion on the agenda was abandoned in favor of discussing a possible raise," or that the vote was "forced through," as you allege. Rather, the Select Board's vote was completely within the scope of the purpose of the executive session purpose. See, *e.g.*, OML Determination 2013-184 (finding that the public body did not violate the OML by discussing in executive session strategy in preparation for renegotiating a contract with School Superintendent).

Terry and Roxanne's understanding is confirmed by the fact that a follow-up executive session for contract negotiations occurred on June 21, at which a tentative agreement with the Highway Superintendent for Fiscal Years 2019 and 2020 was reached. That agreement has now been executed and put into effect.

Because the Select Board concluded that the June 6 voicemail was in violation of OML, Terry intends to make a statement at the Select Board's next meeting, acknowledging the violation, reaffirming the Select Board's commitment to open decision making in compliance with the OML, and pledging to refrain from further violations in the future. The Select Board will also schedule a vote to release the minutes of the relevant executive sessions. Your complaint includes a further contention, quoting Terry as saying that "I don't believe in municipal law; if laws weren't meant to be broken, we wouldn't need the police." Terry specifically denies making this statement. Beyond that, however, the statement has no relevance to the question of whether the OML has been complied with.

The Select Board takes your allegations seriously and has given them full consideration. To the extent that you have identified an OML violation, the Board is committed to rectifying that violation so the Town's business can be transacted with the requisite level of transparency.

The Board looks forward to working with you to attend to that business as the Town moves into the new Fiscal Year.

Sincerely,

J. Raymond Miyares

Terry read, "I apologize to the Town for violating the Open Meeting Law when I left Chuckie a voicemail about the Highway Superintendent's pay. I was focused on making sure that, if the Town Meeting had indeed voted to give the Highway Superintendent a raise, we found the best legal way to honor that vote and pay what we owed. I was also focused on making sure that Chuckie was apprised about what was being contemplated, so he had a chance to weigh in on the matter. I should have been more mindful of precisely abiding by the Open Meeting Law. I am sorry that I put Chuckie in an uncomfortable position, and that I helped create more turmoil for the Town. I promise to be more aware of my actions in the future, so we can avoid having situations like this arise."

Next on the agenda was the discussion on an interim Town Administrator to fill the vacancy as Danielle Fillio resigned to take a position as Town Administrator in Richmond. Terry discussed the need to appoint a strong committee to create a sensible job description and analysis of administrative needs, and a careful plan for recruiting strong applicants; also the need to hire a qualified interim Town Administrator to begin within the next two to three weeks with the ability to serve for six to nine months; allowing for time for the Town to settle, heal and receive proper input on hiring a new Town Administrator.

There was public discussion concerning the process which left the Town Administrator position open and also the need to quickly move forward on hiring an interim.

Christine Rasmussen asked to give a round of applause to Danielle to recognize her for her hard work and ten years of service to the Town. The Board wished Danielle all the best in her in her new job and thanked her for her many years of service and hard work that she had given to the Town.

Terry noted that once it was announced that Danielle was a finalist in Richmond, West Stockbridge Town Administrator, Mark Webber offered to serve as interim Town Administrator. Mr. Webber made it very clear to Terry that he would not be applying for a permanent position. Terry felt that he would be able to administer the Town well and would be a valuable resource for the selection committee.

Roxanne stated that another name recommended to her to fill the interim position is another retired town administrator, Bob Markel. Terry said that Mr. Webber and anyone else having interest in the interim position would be interviewed at the Select Board meeting at 6:30 p.m. on July 22nd.

Terry made a motion to invite Mark Webber to come to the next meeting on July 18th and who ever else might be interested; with target dates of July 18th open for discussion and after July 22nd to make a decision. Roxanne seconded; all were in favor.

Adjournment:

With no further business, Terry adjourned the meeting.