



STATE OF RHODE ISLAND
OFFICE OF THE ATTORNEY GENERAL

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VIA EMAIL ONLY

March 10, 2022
OM 22-13

Dr. Melissa Jenkins
Melissa_jenkins@brown.edu

Thomas More Dickinson, Esquire
Legal Counsel, Bonnet Shores Fire District
tmd@appealRI.com

Re: Jenkins v. Bonnet Shores Fire District Council

Dear Dr. Jenkins and Attorney Dickinson:

We have completed an investigation into the Open Meetings Act (“OMA”) Complaint filed by Dr. Melissa Jenkins (“Complainant”) against the Bonnet Shores Fire District Council (“District”). For the reasons set forth herein, we find no violation.

Background and Arguments

The Complainant alleges that the District violated the OMA when it denied her access to the District’s 2021 Annual Meeting and did not permit her to comment during that meeting. When the Complaint was submitted, this Office indicated to the Complainant that it appeared that the Annual Meeting that was the subject of the Complaint was not materially distinguishable from the financial town meeting that was subject of the Supreme Court’s decision in *Pine v. McGreavy*, 687 A.2d 1244 (R.I. 1997). In that case, the Rhode Island Supreme Court held that an annual financial town meeting that was run by a moderator and featured votes by electors qualified to vote, was not subject to the OMA. This Office’s authority under the OMA is to enforce the OMA statute, R.I. Gen. Laws § 42-46-8, and matters falling outside of the OMA are outside this Office’s authority under that statute. This Office informed the Complainant that if she alleged that the District’s Annual Meeting was legally distinguishable from the annual meeting that was the subject of the Supreme Court’s decision in *Pine*, she was free to provide a supplemental submission.

The Complainant submitted a supplemental submission, arguing that the Annual Meeting was distinguishable from *Pine* because it was not a financial town meeting, had a broad-based agenda,

and did not include an expenditure of public funds. The District's Annual Meeting agenda included items such as "Nomination & election of officers," "Rates of compensation for elected officials," "Land Trust funds allocation," and "New Business." The Complainant contends that participants were allowed to speak on any topic of concern to the residents of the Fire District under "New Business," but she was not permitted to enter the meeting tent nor comment during the meeting. The Complainant alleges that upon arrival at the meeting site, participants were checked off on property tax rolls and received a wristband. The Complainant notes that if the participant was not provided a wristband (which indicated that the person was not on the property tax rolls), they were not allowed to enter the tent, but could stand outside and listen to the proceedings. The Complainant also notes that although the meeting was run by a moderator, the moderator was appointed by the District.

The District, through its legal counsel, Thomas More Dickinson, Esquire, provided a substantive response. The District disputes that the OMA applies to the meeting because a fire district annual meeting is not a meeting of a public body under the OMA. The District contends that even if the OMA does apply, the Annual Meeting was in fact open as it was conducted outdoors in a tent and the Complainant and others could stand outside and listen to what was occurring. The District notes that the Annual Meeting was for persons who were eligible under the District's legislative charter, and the OMA does not require non-electors, such as the Complainant, to have a right to speak at the meeting.

Applicable Law and Findings

When we examine an OMA complaint, our authority is to determine whether a violation of the OMA has occurred. *See* R.I. Gen. Laws § 42-46-8. In doing so, we must begin with the plain language of the OMA and relevant caselaw interpreting this statute.

The OMA requires that all meetings of every public body "shall be open to the public." R.I. Gen. Laws § 42-46-3. For the OMA to apply, however, a "quorum" of a "public body" must convene for a "meeting" as these terms are defined by the OMA. *See Fischer v. Zoning Board of the Town of Charlestown*, 723 A.2d 294 (R.I. 1999). Under the OMA, a "meeting" is defined as "the convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power." R.I. Gen. Laws § 42-46-2(1). A "quorum" is defined as "a simple majority of the membership of a public body." R.I. Gen. Laws § 42-46-2(4). For purposes of the OMA, a "public body" is defined as "any department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government." R.I. Gen. Laws § 42-46-2(5). As such, whether an entity is a "public body" under the OMA is a threshold inquiry. All three of these elements — a quorum, a meeting, and a public body — must be present in order for the OMA to apply; the OMA is not applicable when one or more of these elements is absent. *See Sirios v. Glocester Town Council*, OM 20-50.

In *Pine v. McGreavy*, the Rhode Island Supreme Court considered a situation where a moderator of a financial town meeting caused a reporter to be ejected from the meeting. 687 A.2d 1244 (R.I. 1997). This Office filed a complaint in the Superior Court claiming that such actions violated the

OMA. A justice of the Superior Court, however, disagreed and dismissed the complaint on the basis that the OMA “did not apply to a financial town meeting or to the town moderator who presided at such meeting.” *Id.* at 1245.

On appeal, the Rhode Island Supreme Court affirmed and held that a financial town meeting of qualified electors did not fall within the definitional section of a “public body.” *Id.* In particular, the Court reasoned that a financial town meeting is a quintessential example of an open meeting where the meeting is open to all qualified electors. *Id.* Furthermore, the Supreme Court observed that the OMA “was designed to prevent public bodies of a different type from holding meetings in closed sessions [and] was not directed at financial town meetings that by their very nature cannot be closed and cannot be other than highly public.” The Supreme Court also noted that the “moderator is only the presiding officer” and cannot in and of himself or herself constitute a public body. *Id.* Since *Pine*, the OMA has not been amended in any way that would be material to the issues discussed in *Pine*. Nor has the Supreme Court issued any subsequent decision that calls into question the ongoing validity of the *Pine* decision.

Following *Pine*, this Office has applied the holding in *Pine* and issued multiple findings that meetings of qualified electors, including ones involving a fire district, are not subject to the OMA. See e.g., *In re: Washington Fire Dist. of Coventry*, OM 06-51 (fire district meeting was not subject to the OMA because “the instant session was an assembly of taxpayers from Washington Fire District qualified to vote on Fire District matters”); *Calci v. Coventry Fire Department*, OM 03-06 (finding that “the instant sessions [of the fire district meeting] were an assembly of electors qualified to vote on Fire District matters”). In *In Re Pojac Point Fire District*, ADV OM 12-01, this Office considered the case of an annual meeting of a fire district that constituted “a meeting of all Qualified Electors in the Fire District to raise, discuss, and vote on issues, either listed or not listed on the agenda, pertaining to the Fire District.” Applying *Pine*, this Office concluded that the OMA did not apply to that meeting.

Based upon the reasoning articulated by the Supreme Court in *Pine*, as well as in this Office’s prior findings noted above, we find that the OMA does not apply to the annual District meeting that is the subject of this Complaint. In particular, we observe that similar to the financial town meeting in *Pine*, the evidence presented in this case demonstrates that the instant meeting “by [its] very nature cannot be closed and cannot be other than highly public.” *Pine*, 687 A.2d at 1245. Specifically, like the financial town meeting in *Pine*, the evidence presented in this case demonstrates that the instant meeting was an assembly of hundreds of attendees, including “qualified electors” who could speak and vote on matters related to the District. *Id.* As both the Complainant and District acknowledge, like in *Pine*, members of the press and of the public were allowed to observe the proceedings as well, even if they were not allowed to vote or enter the area where the electors were. See *id.* at 1244 (“The gymnasium had been divided into a section for those electors qualified to vote on the annual budget, a section for members of the public who were not qualified electors, and a section area designated for occupancy by members of the press.”).

The Complainant argues that the moderator was selected by the District and that the meeting in question was not about financial expenditures, but neither of those points is material. As the Supreme Court noted in *Pine*, the moderator is only the presiding officer but is not himself or herself a public body. Additionally, the reasoning in *Pine* was based on the nature of the meeting, including that it featured qualified electors voting on matters (rather than the public body), and was not based on the meeting pertaining to financial matters. The Complainant herself described how electors voted directly on items at the Annual Meeting, just as in *Pine*: “Budget items, including allocation of money to the land trust and to elected officeholders, were discussed and voted on by meeting participants.” This factor – discussion and voting by the participants rather than the public body – is critical and takes this matter outside the OMA.

Following the Supreme Court’s reasoning in *Pine*, we conclude that the OMA does not apply to the June 24, 2021 Annual Meeting of the District because this meeting, in material respects, is analogous to the financial town meeting in *Pine*. See also *Musella v. Central Coventry Fire District* OM 18-25; *Clark v. West Gloucester Fire District*, OM 14-40; *In Re Pojac Point Fire District*, ADV OM 12-01; *Calci v. Coventry Fire District*, OM 03-06; *Langseth v. Buttonswood Fire District*, OM 02-10; *Sexton v. Shelter Harbor Fire District*, OM 00-11. To be clear, our finding only pertains to the District’s Annual Meeting due to the unique nature of the Annual Meeting and does not alter our prior determination that the District Council is a public body that is subject to the OMA. See *Childs, et al. v. Bonnet Shores Fire District*, OM 20-29.

Conclusion

Although the Office of the Attorney General has found that the OMA does not apply and will not file suit in this matter, please be advised that nothing within the OMA prohibits an individual from instituting an action for injunctive or declaratory relief in Superior Court. See R.I. Gen. Laws § 42-46-8(c). The OMA allows the Complainant to file a complaint within ninety (90) days from the date of the Attorney General’s closing of the complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later. See *id.* Please be advised that we are closing this Complaint as of the date of this letter.

We thank you for your interest in keeping government open and accountable to the public.

Sincerely,

PETER F. NERONHA
ATTORNEY GENERAL

By: Katherine Sadeck
Special Assistant Attorney General