

March 18, 2005
OM 05-02

Wayne G. Barber
34 Hamlet Street
Pascoag, RI 02859

Re: Barber v. Burrillville Town Council:

Dear Mr. Barber:

The investigation into your Open Meetings Act [OMA] complaint is complete. In your letter, you allege that the Burrillville Town Council violated the Open Meetings Act by improperly convening its July 28, 2004 meeting at the High School auditorium, which was contrary to published newspaper notices.¹ You state that on the night in question, you went to the town hall in order to attend the seven (7) p.m. meeting, but that you were met with an “empty parking lot which was unlit and very dark.” You indicate that you did not locate the meeting at the High School until 7:12 p.m., at which point the “meeting was already in motion” and “over 100 taxpayers” were already present.

This Department has received a substantive response from Walter J. Kane, attorney for the town council. Mr. Kane represents that the town fully complied with the notice requirements of the OMA for the July 28, 2004 meeting in question. Moreover, he affirms that these notices specifically indicate that the meeting would take place at the Burrillville High School auditorium. As supporting evidence, Mr. Kane submitted an affidavit that lists “the various steps taken by the Town to comply with the law.” These steps include: (1) notice of the meeting, stating the date, time and place of the meeting (the High School auditorium), and the agenda, was posted at the town building and the Harrisville Post Office on July 22, 2004; (2) notice, which included the date, time and place of the meeting (the High School auditorium), was filed electronically with the

¹ Enclosed with your letter are original copies of three published notices, all which indicate that the July 28, 2004 town council meeting was scheduled to take place at the town hall. This evidence shows that on July 28th, the same day as the meeting, the Providence Journal, Northwest Edition, and the Woonsocket Call printed a calendar notice that the Burrillville Town Council would meet at seven (7) p.m. at the town hall located at 105 Harrisville Main St., Harrisville. An additional publication, “The Bargain Buyer,” also printed the same information on this date.

Secretary of State's office on July 22, 2004, and a confirmation of receipt of this notice was received on July 23, 2004; (3) notice of the time, date and place of the meeting (the High School auditorium) and the agenda was posted on the Town of Burrillville's web site on July 22, 2004; (4) notice was posted on both doors of the town building on July 28, 2004, stating that the town council meeting was scheduled to be held at the High School; and (5) notice was mailed to "at least twenty (20) interested residents that had appeared at previous public hearing on the ordinance that was in issue," indicating the same. Additionally, Mr. Kane provided documents to this Department that confirm his account of the efforts taken to give the public notice of the July 28, 2004 meeting. Despite the abovementioned efforts, however, he indicates that the information that was published in the newspaper articles "was not furnished by the Town regarding this specific meeting." Mr. Kane suggests that this information likely "was obtained by the newspaper from the published notice given by the Town at the beginning of each year."

Governed by R.I. Gen. Laws § 42-46-6, the applicable notice provisions of the OMA require the following:

- (b) Public bodies shall give supplemental written public notice of any meeting within a minimum of forty-eight (48) hours before the date. This notice shall include the date the notice was posted, the date, time and place of the meeting, and a statement specifying the nature of the business to be discussed. Copies of the notice shall be maintained by the public body for a minimum of one year. * * *.
- (c) Written public notice shall include, but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting, * * * and at least one other prominent place within the governmental unit, and electronic filing of the notice with the secretary of state pursuant to subsection (e); provided, that in the case of school committee the required public notice shall be published in a newspaper of general circulation in the school district under the committee's jurisdiction; * * *.

The evidence provided to us indicates that the Burrillville Town Council fully complied with the OMA's supplemental notice requirements as stated in R.I. Gen. Laws § 42-46-6(b) & (c). Notice was posted well before the 48-hour time limit in the appropriate locations. Moreover, the notices included required, but more importantly, accurate, information. Although the town council posted notice in more locations than required by statute, we find no evidence that it initiated publication in the periodicals provided to us. As stated in R.I. Gen. Laws § 42-46-6(c), only a school committee is required to publish notice in a "newspaper of general circulation." See Rainey v. Warren Town Council, OM 99-01, at 2 ("The Open Meetings Act does not require the [Warren] Town Council to publish notice in the newspaper").² This Department previously has

² This Department previously has acknowledged that noticed meetings must sometimes convene in alternate locations or on alternate dates due to inclement weather or insufficient capacity of the meeting hall. Under these pressing circumstances, we have

Wayne G. Barber
March 18, 2005
Page 3

found that when a newspaper advertises the incorrect meeting location for a town council meeting, based on information furnished by the town in the beginning of the calendar year, the town council is not in violation of the Open Meetings Act, absent a showing of a deliberate attempt to mislead the public, since the town is not required to post notice in a newspaper. See Pitochelli v. Johnston Town Council, OM 02-07.

Based on the evidence before us, we find that the Burrillville Town Council properly advised the public as early as July 22, 2004 that its meeting would be held at the High School on July 28, 2004. Moreover, we recognize that at 7:00 p.m. on July 28, 2004, the town hall parking lot would not have been dark, and hence, the notice posted on the doors of the hall would have been discoverable. In light of your account that by 7:12 p.m. over 100 people were present at the High School auditorium, we conclude that the posted notice was effective, at a minimum, to apprise this large group of individuals of the meeting location. Moreover, we find no evidence to support any inference that the town council sought to mislead the public. We find no OMA violation in the instant case.

Although the Attorney General will not file suit in this matter, nothing in the OMA precludes an individual from pursuing an OMA complaint in the Superior Court. The complainant may do so 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. R.I. Gen. Laws § 42-46-8. Please be advised that we are closing our file as of the date of this letter.

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

Very truly yours,

Christy Hetherington
Special Assistant Attorney General
Extension 2425

CLH/pl

cc: Walter J. Kane, Esq.

recognized that public bodies must post notice of these changes as soon as practicable. See Littlefield v. New Shoreham Town Council, OM 99-39. In the instant case, the "change" of location from the traditional meeting place, the town hall, to the high school, was amply broadcast to the public through the supplementary notices posted six days before the scheduled meeting. This put the public on notice of the meeting location more than four days beyond the minimum forty-eight hour (48) time requirement of R.I. Gen. Laws § 42-46-6(b).