

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

ATTORNEY GENERAL PETER F. KILMARTIN :
IN HIS OFFICIAL CAPACITY :

V. :

C.A.NO.: 14-

WESTERN COVENTRY FIRE DISTRICT :

COMPLAINT

I. INTRODUCTION

Attorney General Peter F. Kilmartin, acting in his official capacity, brings this action against the Western Coventry Fire District (“the Fire District”) for failing to timely post or file the unofficial minutes for its September 18, 2014 meeting on the Secretary of State’s website in violation of R.I. Gen. Laws § 42-46-7(b)(2).

The Attorney General respectfully requests that this Honorable Court declare that the Fire District’s actions or omissions violated the Open Meetings Act, assess civil fines, and enjoin the Fire District from further violations.

II. PARTIES

1. Plaintiff, Peter F. Kilmartin, is the Attorney General of the State of Rhode Island. Pursuant to R.I. Gen. Laws § 42-46-8, the Attorney General shall investigate Open Meetings Act (“OMA”) complaints filed with the Department of Attorney General, and if found to be meritorious, the Attorney General may institute proceedings for civil penalties, and/or injunctive or declaratory relief.
2. Plaintiff, Attorney General Peter F. Kilmartin brings this action within the meaning of R.I. Gen. Laws § 42-46-8(a).

3. Plaintiff, Attorney General Peter F. Kilmartin also brings this action on behalf of the public interest, within the meaning of R.I. Gen. Laws § 42-46-8(f).
4. Defendant, the Fire District is a “public body” as defined in R.I. Gen. Laws § 42-46-2(c). All meetings of the Fire District are subject to the Open Meetings Act, R.I. Gen. Laws § 42-46-1 et seq.

III. JURISDICTION

5. Jurisdiction over this matter is vested in the Superior Court pursuant to R.I. Gen. Laws § 42-46-8.

IV. FACTS

6. The OMA requires “[a]ll public bodies shall keep written minutes of all their meetings.” R.I. Gen. Laws § 42-46-7(a). Rhode Island General Laws § 42-46-7(b)(2) states that “all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in the mission of extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is a paid department or not, shall post unofficial minutes of their meetings within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier, on the secretary of state’s website.” R.I. Gen. Laws § 42-46-7(b)(2). (Emphases added).
7. The Fire District filed or posted the unofficial minutes for its September 18, 2014 meeting on the Secretary of State’s website on October 14, 2014 when they should have been posted or filed on the Secretary of State’s website by October 9, 2014.
8. The Fire District violated R.I. Gen. Laws § 42-46-7(b)(2).

9. On June 11, 2014, this Department issued Novak v. Western Coventry Fire District, OM 14-24, wherein this Department found that the Fire District violated the OMA by failing to timely post or file its unofficial minutes on the Secretary of State's website for seven (7) meetings. See Exhibit A.
10. On March 9, 2015, the Department of Attorney General issued Novak v. Western Coventry Fire District, OM 15-03. See Exhibit B.
11. The Fire District received a copy of this finding.
12. After concluding that the Fire District violated the OMA, this Department allowed the Fire District the opportunity to address whether the violation was knowing or willful. See Exhibit B at 7.
13. By supplemental finding dated April 13, 2015, this Department concluded that the OMA violations in Novak v. Western Coventry Fire District, OM 15-03, were knowing or willful. See Exhibit C, Novak v. Western Coventry Fire District, OM 15-03B.

COUNT I – VIOLATION OF THE OMA

14. Plaintiff hereby incorporates Paragraphs 1 through 13 herein.
15. The Fire District violated R.I. Gen. Laws § 42-46-7(b)(2) when it failed to timely file or post the unofficial minutes for its September 18, 2014 meeting on the Secretary of State's website.
16. Plaintiff asks that this Honorable Court declare that the Fire District violated R.I. Gen. Laws § 42-46-7(b)(2).
17. Plaintiff asks that this Honorable Court enjoin the Fire District from future violations of R.I. Gen. Laws § 42-46-7(b)(2).

COUNT II – WILLFUL OR KNOWING

18. Plaintiff hereby incorporates Paragraphs 1 through 17 herein.
19. The Fire District violated R.I. Gen. Laws § 42-46-7(b)(2) when it failed to timely file or post the unofficial minutes for its September 18, 2014 meeting on the Secretary of State’s website.
20. The Fire District is presumed to have knowledge of the law.
21. The Fire District had actual knowledge of this OMA requirement based upon correspondence from the Attorney General dated November 4, 2013. See Exhibit D.
22. The Fire District had actual knowledge of this OMA requirement based upon this Department’s finding dated June 11, 2014. See Exhibit A.
23. The Fire District willfully or knowingly violated the OMA when it failed to timely file or post the unofficial minutes for its September 18, 2014 meeting on the Secretary of State’s website.
24. Plaintiff asks that this Honorable Court assess a civil fine against the Fire District for a willful or knowing violation of R.I. Gen. Laws § 42-46-7(b)(2).

WHEREFORE, pursuant to R.I. Gen. Laws § 42-46-8(d), Plaintiff respectfully requests this Honorable Court declare Defendant violated R.I. Gen. Laws § 42-46-7(b)(2), order the Fire District to prospectively file all meeting minutes with the Secretary of State’s website in a timely manner and to impose such remedies and penalties, including costs and a civil fine, as may be available at law and in equity that this Honorable Court finds just.

PLAINTIFF DEMANDS A JURY TRIAL

Respectfully submitted,

PLAINTIFF,
By his Attorneys,

PETER F. KILMARTIN
ATTORNEY GENERAL

/S/ Michael W. Field
/S/ Lisa A. Pinsonneault

Michael W. Field, #5809
Assistant Attorney General
Lisa A. Pinsonneault, #5979
Special Assistant Attorney General
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EXHIBIT A



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903
(401) 274-4400 - TDD (401) 453-0410

Peter F. Kilmartin, Attorney General

June 11, 2014
OM 14-24

Mr. Kent C. Novak

RE: Novak v. Western Coventry Fire District

Dear Mr. Novak:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Western Coventry Fire District (“Fire District”) is complete. By correspondence dated January 31, 2014, you allege the Fire District violated the OMA. More specifically, you allege the Fire District violated R.I. Gen. Laws § 42-46-7(b)(2) when:

- its January 9, 2014 minutes were not posted on the Secretary of State’s website prior to the January 16, 2014 meeting. The minutes were not posted until February 2, 2014.
- its December 19, 2013 minutes were not posted on the Secretary of State’s website prior to the January 9, 2014 meeting. The minutes were not posted until January 14, 2014
- its November 4, 2013 minutes were not posted on the Secretary of State’s website until November 19, 2013, two (2) days prior to the November 21, 2013 meeting.
- its October 28, 2013 minutes were not posted on the Secretary of State’s website prior to the November 4, 2013 meeting. The minutes were not posted until November 21, 2013.
- its October 17, 2013 minutes were not posted on the Secretary of State’s website prior to the October 28, 2013 meeting. The minutes were not posted until November 19, 2013.
- its September 19, 2013 minutes were not posted on the Secretary of State’s website prior to the October 17, 2013 meeting. The minutes were not posted until November 17, 2013.
- its August 15, 2013 minutes were not posted on the Secretary of State’s website prior to the September 19, 2013 meeting. The minutes were not posted until November 17, 2013.

In response to your complaint, we received a substantive response from the Fire District's legal counsel, J. William W. Harsch, Esquire, who also provided a sworn affidavit from the Chair of the Board of Directors of the Fire District, Mr. John Humble. Attorney Harsch states, in pertinent part:

“[T]he District was not made aware of the changes to RIGL 42-46-7 until November 4, 2013. At that time, the District immediately began the process for updating its Standard Administrative Procedure regarding minutes and implementing the changes that were then necessary.

The District disputes Mr. Novak's claim #1 as, according to RIGL 42-46-7, minutes are to be posted not later than 7 days prior to the next regularly scheduled meeting. Based on this, the minutes of the January 9 meeting would have had to have been posted on the same day as the meeting.

The District further disputes Mr. Novak's claim #2, as the January 9, 2014 meeting was not a regularly scheduled meeting and therefore minutes of the December 19, 2013 meeting did not have to be posted prior to the January 9 meeting.

The District also disputes Mr. Novak's claim #3, for the same reason as stated above. The January 9 meeting was not a regularly scheduled meeting and therefore the minutes of the December 19 meeting did not have to be posted until 7 days prior to the next regularly scheduled meeting which was January 16. The District does agree that the minutes were not posted until January 14 as opposed to January 9.

The District does not dispute the facts as provided by Mr. Novak in his January 31, 2014 complaint as to his [remaining] claims * * * which relate to meetings prior to the receipt of the November 4 letter from the Attorney General's office.”

Mr. Humble states, in pertinent part:

“It is my understanding that regularly scheduled meetings as stated in the law are those meetings listed in the meeting schedule posted at the beginning of each calendar year to the Secretary of State site.

Upon receipt of the November 4, 2013 letter, Chief Quattrini immediately forwarded the letter to me for appropriate action. I then made arrangements for the matter to [be] taken up at the next meeting of the Standard Administrative Procedures (SAP) Committee on December 5, 2013.

At the December 5, 2013 SAP Committee meeting * * * the need to update our Minutes of Meetings SAP 5211.00 based on the change in the statute was discussed and a recommendation was submitted to the Board of Directors.

The recommended changes to SAP 5211.00 were discussed at the next-scheduled Board meeting on December 19, 2013 and were approved. * * *

A review of the posted minutes on the Secretary of State's website will show that the Clerk of the Western Coventry Fire District has been diligent in posting the minutes."

We acknowledge your reply dated April 2, 2014.

At the outset, we note that in examining whether a violation of the OMA has occurred, we are mindful that our mandate is not to substitute this Department's independent judgment concerning whether an infraction has occurred, but instead, to interpret and enforce the OMA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the Fire District violated the OMA. See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate.

The OMA requires all public bodies give written notice of their regularly scheduled meetings at the beginning of each calendar year. The notice shall include the dates, times, and places of the meetings and shall be provided to members of the public upon request and to the Secretary of State at the beginning of each calendar year. See R.I. Gen. Laws § 42-46-6(a). Additionally, "[a]ll public bodies shall keep written minutes of all their meetings." R.I. Gen. Laws § 42-46-7(a). "The minutes shall include, but need not be limited to: (1) The date, time, and place of the meeting; (2) The members of the public body recorded as either present or absent; (3) A record by individual members of any vote taken; and (4) Any other information relevant to the business of the public body that any member of the public body requests be included or reflected in the minutes." Id. Rhode Island General Laws § 42-46-7(b)(2), which became effective on July 15, 2013, states that "all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in the mission of extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is a paid department or not, shall post unofficial minutes of their meetings within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier, on the secretary of state's website." R.I. Gen. Laws § 42-46-7(b)(2). (Emphasis added).

Based upon the evidence presented in this case, the Fire District filed its 2013 annual notice on December 19, 2012 and filed its 2014 annual notice on January 4, 2014. The 2013 annual notice listed thirteen (13) meeting dates, one each month, except for the month of April wherein the regularly scheduled meeting was noticed for April 18 and the Fire District's annual meeting was noticed for April 1. Similarly, the 2014 annual notice listed thirteen (13) meeting dates, one each month, except for the month of April wherein the regularly scheduled meeting was noticed for April 17 and the Fire District's annual meeting was noticed for April 7.

It appears that in 2013, the Fire District held at least two additional meetings that were not regularly scheduled, one on October 28, 2013 and one on November 4, 2013. It also appears that

in 2014, the Fire District held at least one additional meeting that was not regularly scheduled, namely on January 9, 2014. It appears the Fire District failed to comply with the provisions of R.I. Gen. Laws § 42-46-7(b)(2) with respect to the seven meetings alleged in your OMA complaint. More specifically, the minutes for its January 9, 2014 meeting should have been posted no later than seven (7) day prior to January 16, 2014, which was the date for its next regularly scheduled meeting. These minutes were not posted until February 2, 2014. The August 15, 2013 meeting minutes should have been posted by September 5, 2013, but were not posted until November 17, 2013. The minutes for the September 19, 2013 meeting should have been posted by October 10, 2013, (within twenty-one (21) days of the meeting), but were not posted until November 17, 2013.

Additionally, the minutes for the October 17, 2013 meeting should have been posted by November 7, 2013, (within twenty-one (21) days of the meeting), but were not posted until November 19, 2013. The minutes for the October 28, 2013 meeting should have been posted by November 14, 2013 (seven (7) days prior to the next regularly scheduled meeting), but were not posted until November 21, 2013. The minutes for the November 4, 2013 meeting should have been posted by November 14, 2013 (seven (7) days prior to the next regularly scheduled meeting), but were not posted until November 19, 2013. The minutes for the December 19, 2013 meeting should have been posted by January 2, 2014 (seven (7) days prior to the next regularly scheduled meeting), but were not posted until January 14, 2014. The minutes for these meetings were not timely posted on the secretary of state's website in violation of R.I. Gen. Laws § 42-46-7(b)(2) ("shall post unofficial minutes of their meetings within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier").

Upon a finding that a complaint brought pursuant to the OMA is meritorious, the Attorney General may initiate suit in the Superior Court. R.I. Gen. Laws § 42-46-8(a). There are two remedies available in suits filed under the OMA: (1) "[t]he court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of [the OMA];" or (2) "the court may impose a civil fine not exceeding five thousand dollars (\$5,000) against a public body or any of its members found to have committed a willful or knowing violation of [the OMA]." R.I. Gen. Laws § 42-46-8.

In this instance, we find no evidence that the Fire District knowingly or willfully violated the OMA. Additionally, injunctive relief is not appropriate because the minutes for the meetings at issue have all been posted on the secretary of state's website. This finding serves as notice to the Fire District that the conduct discussed herein is unlawful and may serve as evidence of a willful or a knowing violation in any similar future situation.

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.

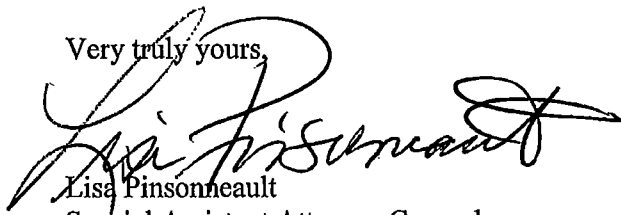
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We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Pinsonneault", written in a cursive style.

Lisa Pinsonneault

Special Assistant Attorney General

Extension 2297

LP/pl

Cc: J. William Harsch, Esquire

EXHIBIT B



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903
(401) 274-4400 - TDD (401) 453-0410

Peter F. Kilmartin, Attorney General

March 9, 2015
OM 15-03

Mr. Kent C. Novak

RE: Novak v. Western Coventry Fire District

Dear Mr. Novak:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Western Coventry Fire District (“Fire District”) is complete. By correspondence dated October 11, 2014, you allege the Fire District violated the OMA. More specifically, you allege the Fire District violated R.I. Gen. Laws § 42-46-7(b)(2) when:

- 1) The unofficial minutes for the January 16, 2014 Board of Directors’ (BOD) meeting were not posted on the Secretary of State’s website until February 19, 2014. You proffer the minutes should have been posted before the February 6, 2014 meeting.
- 2) The unofficial minutes for the February 6, 2014 BOD meeting were not posted on the Secretary of State’s website until February 19, 2014, one day prior to the February 20, 2014 BOD meeting.
- 3) The unofficial minutes for the February 20, 2014 BOD meeting were not posted on the Secretary of State’s website until March 14, 2014. You proffer the minutes should have been posted before the February 27, 2014 meeting.
- 4) The unofficial minutes for the February 27, 2014 BOD meeting were not posted on the Secretary of State’s website until March 14, 2014, one day prior to the March 15, 2014 BOD meeting and six days prior to the March 20, 2014 meeting.
- 5) The approved minutes for the March 15, 2014 BOD meeting were not posted on the Secretary of State’s website until April 19, 2014, thirty-five days after the meeting. You proffer the minutes should have been posted on the Secretary of State’s website at least seven days prior to the March 20, 2014 BOD meeting.

- 6) The approved minutes for the March 20, 2014 meeting were not posted on the Secretary of State's website until April 19, 2014, thirty days after the meeting. You proffer the minutes should have been posted on the Secretary of State's website prior to the March 26, 2014 meeting.
- 7) The approved minutes for the March 26, 2014 meeting were not posted on the Secretary of State's website until April 19, 2014, twenty-four days after the meeting. You proffer the minutes should have been posted on the Secretary of State's website prior to April 15, 2014 BOD meeting.
- 8) The unofficial minutes for the April 17, 2014 meeting were not posted on the Secretary of State's website until May 13, 2014, twenty-six days after the meeting and two days before the May 15, 2014 BOD meeting.
- 9) The unofficial minutes for the May 15, 2014 meeting were not posted on the Secretary of State's website until June 16, 2014, thirty-two days after the meeting and three days before the June 19, 2014 BOD meeting.
- 10) The minutes for the September 18, 2014 BOD meeting have not been posted on the Secretary of State's website as of the date of your complaint (October 11, 2014), but were posted on October 14, 2014.
- 11) The unofficial minutes for the May 1, 2014 Standard Administrative Procedure (SAP) meeting were not posted on the Secretary of State's website until June 16, 2014.

In response to your complaint, we received a substantive response from the Fire District's legal counsel, J. William W. Harsch, Esquire, who also provided an affidavit from the Chair of the Board of Directors of the Fire District, Mr. John Humble.

Attorney Harsch states, in pertinent part:

"[B]eing a small and mainly volunteer entity, and having of necessity to address its public safety and health mandate as an absolute priority, [the Fire District] does its best to meet transparency and public records requests. Meeting minutes are the responsibility of a part-time District Clerk who is an elected District officer and not an employee of the District, and whose primary employment is as Executive Assistant to the Town Manager of Coventry.

* * *

When OMA and APRA compliance concerns have been raised, [the Fire District] has promptly addressed whatever problem may have been pointed out, including guidance from [the Department of Attorney General].

* * *

I would merely note that none of Mr. Novak's current complaints are substantive in that, although the minutes of meetings are obviously important, the complaint is as to the procedural/technical matter of missing required filing dates for draft minutes.

The District once again urges Mr. Novak to utilize his available avenues * * * to communicate his concerns directly to the District in the first instance, reserving any further requests for the assistance of your office for any instance where he believes, in good faith, that the District is disregarding such concerns."

Mr. Humble states, in pertinent part:

"I am the Chair of the Board of Directors (BOD) of the Western Coventry Fire District (WCFD or District).

* * *

The Clerk of the District, who has attended and recorded the minutes of all the meetings listed, holds a part time position. She is also Executive Assistant to the Coventry Town Manager. The recent legislative revision applying yet another reporting requirement on fire districts and setting new filing deadlines is requiring changes to previous procedures and specifically has placed additional demands on the part-time office of District Clerk. As it has in the past when such questions have been raised, the District will strive to be more attentive to the new filing requirements for draft minutes in the future.

* * *

Unofficial or approved copies of minutes for any meetings held by the District are available if requested under the Access to Public Records Act. Further, the Board members, including myself, are available to District residents at virtually any time, so anyone who has a question or request as to a meeting or similar matter could easily obtain such information."

By correspondence dated October 28, 2014, this Department requested that you supplement your complaint to explain why some of these meetings would not be barred by the statute of limitations. See R.I. Gen. Laws § 42-46-8(b) ("[n]o complaint may be filed by the attorney general after one hundred eighty (180) days from the date of public approval of the minutes of the meeting at which the alleged violation occurred"). You filed a response dated November 6, 2014 wherein you indicate that your complaint was filed within 180 days of the public approval of the meeting minutes at which the alleged violations occurred.

The Fire District also addressed this issue and responds that allegations one through seven of your complaint are "untimely as the statutory 180 day limitation period has expired (R.I.G.L. § 42-46-8(b))." Rhode Island General Laws § 42-46-8(b) states:

“[n]o complaint may be filed by the attorney general after one hundred eighty (180) days from the date of public approval of the minutes of the meeting at which the alleged violation occurred.” (Emphasis added).

Respectfully, the Fire District addresses, but does not develop, this statute of limitations defense. The Fire District does not state when the meeting minutes in question were approved, if at all. In fact, our review of allegations 1–4 demonstrate that as of the date of this finding, those minutes have never been approved. As such, the statute of limitations does not bar our review of all the allegations set forth in your complaint and even if the statute of limitations were to bar this Department from the filing of a “complaint,” as R.I. Gen. Laws § 42-46-8(b) provides, for the reasons demonstrated below, it is unnecessary for us to address this issue. Additionally, the Fire District raises the issue whether you were aggrieved by this violation. In your reply, you indicated you were unable to attend Fire District meetings due to personal reasons and you depended on the Fire District’s postings on the Secretary of State’s website. Since the Fire District has not developed this aggrievement argument, and because we conclude that you have surpassed the standing hurdle, we reach the merits of your complaint.

At the outset, we note that in examining whether a violation of the OMA has occurred, we are mindful that our mandate is not to substitute this Department’s independent judgment concerning whether an infraction has occurred, but instead, to interpret and enforce the OMA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the Fire District violated the OMA. See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate.

The OMA requires “[a]ll public bodies shall keep written minutes of all their meetings.” R.I. Gen. Laws § 42-46-7(a). Rhode Island General Laws § 42-46-7(b)(2) states that “all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in the mission of extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is a paid department or not, shall post unofficial minutes of their meetings within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier, on the secretary of state’s website.” R.I. Gen. Laws § 42-46-7(b)(2). (Emphases added). It is notable that R.I. Gen. Laws § 42-46-7(b) was enacted into law on June 15, 2013, and became effective upon passage.

Applying R.I. Gen. Laws § 42-46-7(b) to the instant facts, we make the following findings:

1. The minutes for the January 16, 2014 BOD meeting were not posted on the Secretary of State’s website until February 19, 2014. The next regularly scheduled meeting, after January 16, 2014, was February 20, 2014. The unofficial minutes should have been posted by February 6, 2014 (“within twenty-one (21) days of the meeting”). The failure to do so was a violation of the OMA.

2. The minutes for the February 6, 2014 BOD meeting were not posted on the Secretary of State's website until February 19, 2014. The next regularly scheduled meeting was February 20, 2014. The unofficial minutes should have been posted by February 13, 2014 ("not later than seven (7) days prior to the next regularly scheduled meeting"). The failure to do so was a violation of the OMA.
3. The minutes for the February 20, 2014 BOD meeting were not posted on the Secretary of State's website until March 14, 2014. The next regularly scheduled meeting was March 20, 2014. The unofficial minutes should have been posted by March 13, 2014 ("within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier"). The failure to do so was a violation of the OMA.
4. The minutes for the February 27, 2014 BOD meeting were not posted on the Secretary of State's website until March 14, 2014. The next regularly scheduled meeting was March 20, 2014. The unofficial minutes should have been posted by March 13, 2014 ("not later than seven (7) days prior to the next regularly scheduled meeting"). The failure to do so was a violation of the OMA.
5. The minutes for the March 15, 2014 BOD meeting were not posted on the Secretary of State's website until April 19, 2014. The next regularly scheduled meeting was March 20, 2014.¹ Because the March 15, 2014 minutes were not posted "within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier," the Fire District violated the OMA.
6. The minutes for the March 20, 2014 BOD meeting were not posted on the Secretary of State's website until April 19, 2014. The next regularly scheduled meeting was April 17, 2014. The unofficial meeting minutes should have been posted by April 10, 2014 ("within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier"). The failure to do so was a violation of the OMA.
7. The minutes for the March 26, 2014 BOD meeting were not posted on the Secretary of State's website until April 19, 2014. The next regularly scheduled meeting was April 17, 2014. The unofficial minutes should have been posted by April 10, 2014 ("not later than seven (7) days prior to the next regularly scheduled meeting"). The failure to do so was a violation of the OMA.
8. The minutes for the April 17, 2014 BOD meeting were not posted on the Secretary of State's website until May 13, 2014. The next regularly scheduled meeting was May 15,

¹ Although we recognize that seven (7) days prior to the next regularly scheduled meeting – March 20, 2014 – would have pre-dated the meeting in question, the evidence demonstrates that even if we used the next regularly scheduled April meeting – April 17, 2014 – the minutes were still not filed until after that meeting.

2014. The unofficial meeting minutes should have been posted by May 8, 2014 (“within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier”). The failure to do so was a violation of the OMA.

9. The minutes for the May 15, 2014 BOD meeting were not posted on the Secretary of State’s website until June 16, 2014. The next regularly scheduled meeting was June 19, 2014. The unofficial minutes should have been posted by June 5, 2014 (“within twenty-one (21) days of the meeting”). The failure to do so was a violation of the OMA.
10. The minutes for the September 18, 2014 BOD meeting were posted on the Secretary of State’s website on October 14, 2014. The next regularly scheduled meeting was October 16, 2014. The unofficial minutes should have been posted by October 9, 2014 (“within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier”). The failure to do so was a violation of the OMA.
11. The minutes for the May 1, 2014 SAP meeting were not posted on the Secretary of State’s website until June 16, 2014. It is unclear, based upon the evidence presented, whether the SAP committee held regularly scheduled meetings. Nonetheless, the SAP committee posted its meeting minutes well after twenty-one (21) days of the meeting. The failure to timely post was a violation of the OMA.

Upon a finding that a complaint brought pursuant to the OMA is meritorious, the Attorney General may initiate suit in the Superior Court. R.I. Gen. Laws § 42-46-8(a). There are two remedies available in suits filed under the OMA: (1) “[t]he court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of [the OMA];” or (2) “the court may impose a civil fine not exceeding five thousand dollars (\$5,000) against a public body or any of its members found to have committed a willful or knowing violation of [the OMA].” R.I. Gen. Laws § 42-46-8.

In Carmody v. Rhode Island Conflict of Interest Commission, 509 A.2d 452 (R.I. 1986), the Rhode Island Supreme Court examined the legal standard for a “knowing and willful” violation. As summarized in a later case, DiPrete v. Morsilli, 635 A.2d 1155, 1163-64 (R.I. 1994), the Court:

“has held that when a violation of the statute is reasonable and made in good faith, it must be shown that the official ‘either knew or showed reckless disregard for the question of whether the conduct was prohibited by [the] statute * * * Consequently an official may escape liability when he or she acts in accordance with reason and in good faith. We have observed, however, that it is ‘difficult to conceive of a violation that could be reasonable and in good faith. In contrast, when the violative conduct is not reasonable, it must be shown that the official was ‘cognizant of an appreciable possibility that he [might] be subject to the

statutory requirements and [he] failed to take steps reasonably calculated to resolve the doubt.” (internal citations omitted). (Emphasis added).

On June 11, 2014, this Department issued Novak v. Western Coventry Fire District, OM 14-24, wherein this Department found that the Fire District violated the OMA by failing to timely post its unofficial minutes on the Secretary of State’s website for seven (7) meetings – the same issue we address herein. Notwithstanding this actual notice, previously, by letter dated November 4, 2013, the Attorney General advised all Fire Districts that the OMA had been amended, effective July 2013, to include R.I. Gen. Laws § 42-46-7(b)(2)’s posting requirement – the precise requirement that we find the Fire District has violated.

Considering the Attorney General’s November 3, 2013 correspondence, as well as Novak, OM 14-24, released on June 11, 2014, we have grave concerns regarding the Fire District’s failure to timely post its September 18, 2014 unofficial minutes. In doing so, we note that this is the only violation (and allegation) that occurred post-June 11, 2014 and the Fire District’s failure to timely post its March 15, 2014, March 20, 2014, March 26, 2014, and April 17, 2014 unofficial minutes appears to be barred by the expiration of the statute of limitations.² See R.I. Gen. Laws § 42-46-8. Frankly, our concern is increased by the Fire District’s representation that it “will strive to be more attentive to the new filing requirements for draft minutes in the future.” Simply stated, our goal is compliance and is supported by the OMA’s enforcement provisions.

While the Fire District’s open session unofficial minutes for the meetings discussed herein are presently posted on the Secretary of State’s website – and thus injunctive relief is not appropriate – in this instance, we believe it is appropriate to seek a supplemental response from the Fire District concerning whether the violation regarding the September 18, 2014 meeting – the meeting that occurred after the Fire District received this Department’s finding issued June 11, 2014, Novak v. Western Coventry Fire District, OM 14-24 – was willful or knowing. The issue is raised that the Fire District was actually aware of its statutory obligation to file unofficial open session minutes in a timely manner, yet failed to do so in this case.

We shall allow the Fire District the opportunity to respond to our concern that the instant violation is “willful or knowing” in accordance with DiPrete and Carmody. The Fire District’s response should not be conclusory and must be provided within ten (10) business days of the date of this finding. Should you wish, you may also provide this Department a substantive response on this same willful or knowing issue within the same ten (10) business days.

² Even though our precedent would have barred the review of your allegations five (5) through seven (7) concerning the meeting minutes of March 15, 2014, March 20, 2014 and March 26, 2014 since your complaint was filed within days of the expiration of the statute of limitations, see Portsmouth Democratic Town Committee v. Portsmouth Town Council, OM 11-33, nonetheless, a lawsuit with respect to these meeting minutes is currently barred by the statute of limitations. Under similar circumstances, we have declined to even consider the soon to be time barred allegations. See Tingle v. Chariho School Committee, OM 98-21; Valentine v. Narragansett Bay Commission, OM 98-22; Engelhard v. Jamestown School Committee, OM 98-27.

Novak v. Western Coventry Fire District

OM 15-03

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Thereafter, a supplemental finding will be issued concerning whether the instant violation is "willful or knowing."

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

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lisa Pinsonneault".

Lisa Pinsonneault
Special Assistant Attorney General
Extension 2297

LP/pl

Cc: J. William Harsch, Esquire

EXHIBIT C



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903
(401) 274-4400 - TDD (401) 453-0410

Peter F. Kilmartin, Attorney General

April 13, 2015
OM 15-03B

Mr. Kent C. Novak

RE: Novak v. Western Coventry Fire District

Dear Mr. Novak:

This correspondence serves as a supplemental finding to Novak v. Western Coventry Fire District, OM 15-03, released March 9, 2015. In Novak, we reviewed your October 11, 2014 Open Meetings Act (“OMA”) complaint and concluded that the Western Coventry Fire District (“Fire District”) violated the OMA when the unofficial minutes for eleven (11) of its meetings were not timely posted on the Secretary of State’s website. The sole issue to be addressed in this supplemental finding is whether the Fire District’s violation concerning the untimely posting of its September 18, 2014 minutes on the Secretary of State’s website was willful or knowing.¹

In response to our finding, on March 30, 2015, this Department received a response from the Fire District’s legal counsel, J. William W. Harsch, Esquire. In pertinent part, Attorney Harsch relayed:

“The failure to post the minutes of the September 18, 2014 Board of Directors meeting by October 9, 2014, a Thursday, and instead posting them on October 14, 2014, the first business day after the three-day Columbus Day weekend (arguably a delay of a single business day) does not meet the standard of being a ‘knowing and willful’ action on the part of the District.

¹ We noted in Novak, OM 15-03, the statute of limitations had run on three (3) of the eleven meetings. In another complaint filed by you, this Department concluded in a finding issued on June 11, 2014, that the Fire District violated the OMA by failing to timely post its unofficial minutes on the Secretary of State’s website for seven (7) meetings – the same issue addressed herein. See Novak v. Western Coventry Fire District, OM 14-24. We noted that the September 18, 2014 meeting is the only meeting that occurred subsequent to the June 11, 2014 finding release date.

Black's Law Dictionary, 827 (6th Ed 1990), in defining the word 'knowingly' equates it with the terms 'willfully' and 'intentionally.' Similarly, it equates the term 'willful' with the term 'deliberate' and as '[I]ntending the result.' Black's definition also uses the word '[P]remeditated' and 'malicious.' * * *

Similar to the Black's Law Dictionary definition, West's Encyclopedia of American Law * * * in analyzing these two terms, uses the words 'intended' and 'deliberate,' and the phrase 'without any excuse or **Mitigating Circumstances**' (emphasis in original). This entry includes the comment that '[T]here is no precise definition of the term *willful* because its meaning largely depends on the context in which it appears.'

* * *

There is no basis on which to conclude that the failure to file the minutes of the Western Coventry Fire District Board of Directors on October 9 rather than October 14 was intentional, deliberate, premeditated or malicious. It was simply the result of an ongoing 'best efforts,' 'good faith' effort to be in compliance with this particular (and onerous for an entity of this size, with its priorities having to always be the protection of the residents of its wide-spread service from injury and loss of life) mandate. * * *

There is no question that the Western Coventry Fire District, being mainly a small volunteer organization, has been having difficulty with the fairly demanding filing requirements imposed on fire districts relating to the posting of draft and final minutes of official meetings while at the same time conducting the other activities relating to the operation of the District and Department * * *

Further, there has never been any showing of an intent on the part of the District and/or its leadership to hide anything from the public, avoid responding to requests for information, or otherwise avoid the clear intent of the Statute about which we are here concerned * * * Among other indications of this is the fact that leaders of the District attend the forums held by [the Department of the Attorney General] to explain the workings and the requirements of both statutes. I would also note that the record shows that seldom if ever, in all of Mr. Novak's complaints, has he alleged that there is intentional secrecy or substantive (rather than procedural) violation of open meetings/open records requirements that apply. (Emphasis in original).

You did not file a timely reply.

The OMA requires "[a]ll public bodies shall keep written minutes of all their meetings." R.I. Gen. Laws § 42-46-7(a). Rhode Island General Laws § 42-46-7(b)(2) states that "all volunteer fire companies, associations, fire district companies, or any other organization currently engaged

in the mission of extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is a paid department or not, shall post unofficial minutes of their meetings within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier, on the secretary of state's website." R.I. Gen. Laws § 42-46-7(b)(2). (Emphases added). It is notable that R.I. Gen. Laws § 42-46-7(b) was enacted into law on June 15, 2013, and became effective upon passage.

As stated *supra*, on June 11, 2014, this Department issued Novak v. Western Coventry Fire District, OM 14-24, wherein this Department found that the Fire District violated the OMA by failing to timely post its unofficial minutes on the Secretary of State's website for seven (7) meetings – the same issue we address herein. Notwithstanding this actual notice, previously, by letter dated November 4, 2013, the Attorney General advised all Fire Districts that the OMA had been amended, effective July 2013, to include R.I. Gen. Laws § 42-46-7(b)(2)'s posting requirement – the precise requirement that we find the Fire District has violated.

In its response, the Fire District does not contest our finding a violation, but instead insists that the violation was not "willful and knowing" because its unofficial minutes were posted soon after October 9, 2014 and because the Fire District has applied its "best efforts" and "good faith."

In Carmody v. Rhode Island Conflict of Interest Commission, 509 A.2d 452 (R.I. 1986), the Rhode Island Supreme Court examined the legal standard for a "knowing and willful" violation. As summarized in a later case, DiPrete v. Morsilli, 635 A.2d 1155, 1163-64 (R.I. 1994), the Court:

"has held that when a violation of the statute is reasonable and made in good faith, it must be shown that the official 'either knew or showed reckless disregard for the question of whether the conduct was prohibited by [the] statute * * * . Consequently an official may escape liability when he or she acts in accordance with reason and in good faith. We have observed, however, that it is 'difficult to conceive of a violation that could be reasonable and in good faith. In contrast, when the violative conduct is not reasonable, it must be shown that the official was 'cognizant of an appreciable possibility that he [might] be subject to the statutory requirements and [he] failed to take steps reasonably calculated to resolve the doubt.'" (internal citations omitted).

Considering the "willful and knowing" standard articulated by the Supreme Court, we must conclude that the Fire District's failure to timely post unofficial minutes was not "reasonable," and indeed, the Fire District has not supplied any specific facts for us to make such a conclusion. Instead, based upon the totality of the circumstances, we conclude that the Fire District was "cognizant of an appreciable possibility that [it may] be subject to the statutory requirements and [it] failed to take steps reasonably calculated to resolve the doubt or otherwise comply." DiPrete, 635 A.2d at 1164. See id. ("it is 'difficult to conceive of a violation that could be reasonable and in good faith'"). The Fire District was cognizant of an appreciable possibility it was subject to the statutory requirements and it failed to take steps reasonably calculated to resolve that doubt. The Fire District filed the minutes for its September 18, 2014 meeting on October 14, 2014 when

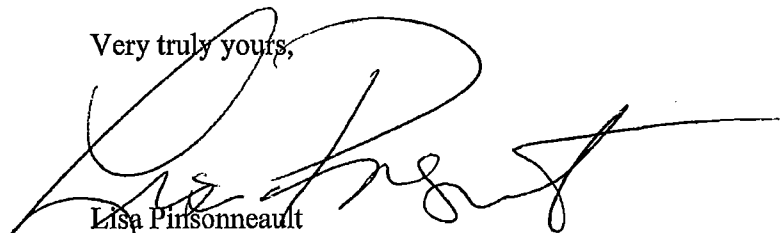
they should have been posted by October 9, 2014. In its defense, the Fire District submits that its statutory compliance is “improving,” leaving no doubt in our minds that the Fire District was aware that it had a statutory requirement to file its unofficial meeting minutes within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier, on the secretary of state’s website. While the Fire District correctly notes that its unofficial minutes were filed within days after its statutory deadline, at most, this factor may be relevant to the civil fine imposed rather than the determination that the instant violation was “willful or knowing.”

Additionally, legal counsel suggests that the failure to timely post unofficial minutes was not the result of “intentional secrecy.” Respectfully, as discussed supra, “intentional” is not the standard used. The Fire District also requests that this Department give weight to mitigating factors “including good faith” and “best efforts,” and that there is “no question that continued effort at full compliance must be a District priority going forward.” Although we appreciate and accept legal counsel’s candor, if this Department determines that a public body commits a knowing or willful violation, yet allows the public body to escape the sanctions of such a determination by expressing “good faith” and “best efforts” and ensuring future compliance, the OMA would be left in tatters. See Block v. Rhode Island State Properties Committee, OM 14-26B.

We must conclude that when the Fire District failed to timely post the unofficial minutes for its September 18, 2014 meeting, the Fire District willfully or knowing violated the OMA as described by the Supreme Court. Accordingly, this Department will file a civil lawsuit against the Fire District.

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

Very truly yours,



Lisa Pinsonneault
Special Assistant Attorney General
Extension 2297

LP/pl

Cc: J. William W. Harsch, Esquire

EXHIBIT D



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903
(401) 274-4400 - TDD (401) 453-0410

Peter F. Kilmartin, Attorney General

November 4, 2013

[REDACTED], Chief
[REDACTED]
[REDACTED]
[REDACTED]

Dear Chief [REDACTED]:

I hope this letter finds you well.

During the past legislative session, the General Assembly amended the Open Meetings Act ("OMA"), R.I. Gen. Laws § 42-46-1 et seq., to require that all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in the mission of extinguishing fires and preventing fire hazards, post unofficial minutes of its meetings on the Secretary of State's website within twenty-one (21) days of the meeting. Prior to this amendment, there was no legislative requirement that fire-related entities post or electronically file minutes on the Secretary of State's website. The entire legislative amendment is included within this letter, but in pertinent part reads:

"all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in the mission of extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is a paid department or not, shall post unofficial minutes of their meetings within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier, on the secretary of state's website." R.I. Gen. Laws § 42-46-7(b)(2).

Since this 2013 amendment pertains only to fire-related entities, I wanted to take this opportunity to notify you of this change and to ensure future compliance. I ask that you also notify any other appropriate personnel within your Department or District of this change. If you have any questions regarding this amendment, please be sure to consult with your legal counsel, or contact this Department.

As always, thank you for all your community efforts, including your efforts to keep government open and accountable to the public.

Very truly yours,

Peter F. Kilmartin
Attorney General

Encl.

2013 -- S 1025

LC02870

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

AN ACT

RELATING TO STATE AFFAIRS AND GOVERNMENT

Introduced By: Senator Ryan W. Pearson

Date Introduced: June 25, 2013

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 42-46-7 of the General Laws in Chapter 42-46 entitled "Open
2 Meetings" is hereby amended to read as follows:

3 42-46-7. Minutes. -- (a) All public bodies shall keep written minutes of all their
4 meetings. The minutes shall include, but need not be limited to:

5 (1) The date, time, and place of the meeting;

6 (2) The members of the public body recorded as either present or absent;

7 (3) A record by individual members of any vote taken; and

8 (4) Any other information relevant to the business of the public body that any member of
9 the public body requests be included or reflected in the minutes.

10 (b)(1) A record of all votes taken at all meetings of public bodies, listing how each
11 member voted on each issue, shall be a public record and shall be available, to the public at the
12 office of the public body, within two (2) weeks of the date of the vote. The minutes shall be
13 public records and unofficial minutes shall be available, to the public at the office of the public
14 body, within thirty-five (35) days of the meeting or at the next regularly scheduled meeting,
15 whichever is earlier, except where the disclosure would be inconsistent with sections 42-46-4 and
16 42-46-5 or where the public body by majority vote extends the time period for the filing of the
17 minutes and publicly states the reason.

18 (2) In addition to the provisions of subdivision (b)(1), all volunteer fire companies,
19 associations, fire district companies, or any other organization currently engaged in the mission of

1 extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is
2 a paid department or not, shall post unofficial minutes of their meetings within twenty-one (21)
3 days of the meeting, but not later than seven (7) days prior to the next regularly scheduled
4 meeting, whichever is earlier, on the secretary of state's website.

5 (c) The minutes of a closed session shall be made available at the next regularly
6 scheduled meeting unless the majority of the body votes to keep the minutes closed pursuant to
7 sections 42-46-4 and 42-46-5.

8 (d) All public bodies within the executive branch of the state government and all state
9 public and quasi-public boards, agencies and corporations, and those public bodies set forth in
10 subdivision (b)(2), shall keep official and/or approved minutes of all meetings of the body and
11 shall file a copy of the minutes of all open meetings with the secretary of state for inspection by
12 the public within thirty-five (35) days of the meeting; provided that this subsection shall not apply
13 to public bodies whose responsibilities are solely advisory in nature.

14 (e) All minutes and unofficial minutes required by this section to be filed with the
15 secretary of state shall be electronically transmitted to the secretary of state in accordance with
16 rules and regulations which shall be promulgated by the secretary of state. ~~This requirement of~~
17 ~~the electronic transmission and filing of minutes with the secretary of state shall take effect one~~
18 ~~year after this subsection takes effect.~~ If a public body fails to transmit minutes or unofficial
19 minutes in accordance with this subsection, then any aggrieved person may file a complaint with
20 the attorney general in accordance with section 42-46-8.

21 SECTION 2. This act shall take effect upon passage.

LC02870