

2006 WL 4573846 (R.I.A.G.)

Office of the Attorney General
State of Rhode Island

OM 06-37

April 7, 2006

RE: Chretien v. Foster School Committee

Mr. Dennis R. Chretien

Mr. Joseph L. Fava, Jr.

Fava v. Foster
School Committee

Dear Mr. Chretien and Mr. Fava:

The investigations into your two separate Open Meetings Act [OMA] complaints against the Foster School Committee [School Committee] are complete. In the first complaint, Mr. Chretien alleges that the School Committee violated the notice requirements provided in [R.I. Gen. Laws § 42-46-6](#) when it posted a misleading notice on the bulletin board at the Captain Isaac Paine School for the School Committee meeting held at 6:30 P.M. on June 15, 2005. He indicates that the larger text on the school's bulletin board "lead many to believe that the meeting had been postponed and rescheduled yet a third time." Further, he alleges that a meeting was held in violation of the OMA in light of the fact that the School Committee implemented a new policy concerning meeting time and a limitation on public comment at an unknown time and place prior to the June 15th meeting.

In the second complaint, Mr. Fava alleges that the School Committee violated the notice requirements provided in [R.I. Gen. Laws § 42-46-6\(c\)](#) when it published notice in the Bargain Buyer, which he states is "not a newspaper," and failed to file electronic notice with the Secretary of State's office for the meeting of June 15, 2005. Further, he alleges that the Committee failed to provide, or make available, the minutes of the May 24, 2005 meeting. Although Mr. Fava has indicated to me that he cannot evidence that he made a specific request for these minutes, he asks this Department to inquire whether these minutes were timely compiled and made available to the public as required by [R.I. Gen. Laws § 42-46-7\(b\)](#), in light of the fact that minutes are routinely provided at Committee meetings for the previous meeting, however, at the June 15, 2005 meeting, none were available. Since both complaints overlap to a certain extent, we address both in this finding, although we do so separately.

FIRST COMPLAINT - from Mr. Chretien

In the first complaint, Mr. Chretien's initial allegation is that the School Committee violated the notice requirements provided in [R.I. Gen. Laws § 42-46-6](#) when it posted a misleading notice on the bulletin board at the Captain Isaac Paine School for the School Committee meeting held at 6:30 P.M. on June 15, 2005. According to Mr.

Chretien, "notice was published in the Bargain Buyer approximately one week in advance, and notice was posted at the Captain Isaac Paine School, the principal office of the School Committee." Mr. Chretien further contends that the bulletin board posting "did lead many to believe that the meeting had been postponed and rescheduled yet a third time, and people who called Town Hall to verify this were informed that the meeting was still scheduled for June 15 at 7:00 PM."

We have received a substantive response from Vicki J. Bejma, Esq., counsel for the Foster School Committee. Addressing the allegation concerning the misleading notice on the bulletin board, Attorney Bejma states "The notice on its face clearly indicates that the meeting was scheduled for June 15, 2005. The notice did have an asterisk, with a note providing a possible postponement date to June 20, 2005 because the rain date for Pongansett [graduation] was June 15, 2005 (see Exhibit B.) The fact that the meeting was still scheduled for June 15, 2005 would have been clear to an observer." Ms. Bejma also relates, "the posting made it clear that the June 15, 2005 meeting was to be held at 6:30 P.M."

*2 The OMA requires that all public bodies "shall give supplemental written public notice of any meeting within a minimum of forty-eight (48) hours before the date." [R.I. Gen. Laws § 42-46-6\(b\)](#). The notice "shall include, in addition to date, time, and place, a statement specifying the nature of the business to be discussed." *Id.* In addition to the posting requirements applicable to all public bodies, "in the case of school committees the required public notice shall [also] be published in a newspaper of general circulation in the school district under the committee's jurisdiction." [R.I. Gen. Laws § 42-46-6\(c\)](#).

While reserving our opinion as to whether the School Committee's notice complied with the OMA, which shall be addressed in Mr. Fava's complaint, we conclude that no violation occurred as to notice being misleading. In particular, based upon our review of the posted notices, we conclude that public notice was properly provided that the School Committee's meeting would convene on June 15, 2005 at 6:30 P.M.

As to Mr. Chretien's second allegation, he also alleges in his complaint that the meeting was held in violation of the OMA in light of the fact that the School Committee implemented a new policy concerning meeting time and a limitation on public comment at an unknown time and place prior to the June 15th meeting. As to this allegation, Mr. Chretien contends in his letter that the original School Committee meeting was scheduled for June 28, 2005 at 7:00 P.M. However, the School Committee wanted to have its meeting before the school year ended. Therefore, the meeting was moved to June 14, 2005 at 7 P.M. Later, the local high school scheduled its graduation for that date and time, so the School Committee changed the meeting to June 15 at 7:00 P.M. Mr. Chretien then states: "When notice was published for the twice-rescheduled meeting on June 15, the starting time was posted as 6:30 as opposed to the traditional 7:00."

Attorney Bejma disagrees that the meeting was held in violation of the OMA. She states "it is not unprecedented for the Foster School Committee to change its meeting time from 7:00 to 6:30 or even to 6:00 in the event that it is anticipated that the meeting would be lengthy." To support this claim, Ms. Bejma provided copies of prior Foster School Committee meetings with starting times other than 7:00 P.M. According to Ms. Bejma, the main reason for the change of time is that the meetings were going too late into the night. The stenographer volunteered her time at the meeting to help the town, but she decided to quit after the May 2005 meeting because the meetings were affecting her daytime job. Therefore, Attorney Bejma states "Donna Mansolillo, Chairperson of the School Committee, conferred with the Superintendent of Schools about the lateness of the meetings. The Chairperson herself decided that an earlier meeting time was appropriate" and that "The Chairperson arrived at this decision without consulting with the other School Committee members."

*3 Based on the evidence presented, we conclude that the School Committee did not violate the OMA. Mr. Chretien provides no basis to support his contention that the School Committee implemented a new policy concerning meeting time and a limitation on public comment at an unknown time and place prior to the June 15th meeting. Instead, Donna Mansolillo, Chairperson of the School Committee, attests that she conferred with the Superintendent of Schools about the lateness of the meetings, and that she arrived at the decision to change the time of the meeting without conferring with other School Committee members. Moreover, Mr. Chretien alleges that two members of the School Committee met privately to discuss these two issues, yet even if these allegations were true, since a quorum of the School Committee did not participate, there would still be no violation. Accordingly, we find no violation.

Although the Attorney General will not file suit in this matter, nothing within the OMA precludes an individual from pursuing an OMA complaint in the Superior Court. The complainant may do so within “ninety (90) days 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, we are closing our file as of the date of this letter.

SECOND COMPLAINT - from Mr. Fava

In the second complaint, Mr. Fava alleges the School Committee violated the notice requirements provided in [R.I. Gen. Laws § 42-46-6\(c\)](#) when it published notice in the Bargain Buyer, which he states is “not a newspaper,” and failed to file electronic notice with the Secretary of State’s office for the meeting of June 15, 2005. Further, he alleges that the School Committee failed to provide, or make available, the minutes of the May 24, 2005 meeting. In a subsequent letter, Mr. Fava states that although he personally attended the June 15th meeting, he was not aware that notice was posted in the Bargain Buyer until the Chairperson Ms. Donna Mansolillo stated at the meeting that notice was published in the Bargain Buyer. According to Mr. Fava, he became aware of the June 15th meeting through communications with other parents who were planning to attend the School Committee meeting.

We have received a substantive response from Vicki J. Bejma, Esq., counsel for the Foster School Committee. Addressing the allegation that the Committee violated the notice requirements provided in [R.I. Gen. Laws § 42-46-6\(c\)](#) when it published notice in the Bargain Buyer, Attorney Bejma states “The Bargain Buyer has general circulation in the northwest area of the state, including Foster.” Furthermore, “Residents of the Foster-Glocester area have relied upon the Bargain Buyer as a source of political information for many years.” Ms. Bejma concludes her argument that the Bargain Buyer is a newspaper of general circulation by stating “Finally, we note that the Foster School Committee has advertised its meetings in the Bargain Buyer for over seventeen years, without complaint.”

*4 In support of her contentions, Ms. Bejma submitted an affidavit from Donna Mansolillo, Chairperson of the School Committee. Ms. Mansolillo attests that “The Foster School Committee has utilized the Bargain Buyer to advertise their meeting notices throughout my tenure as School Committee member” and that “The Foster School Committee utilizes the Bargain Buyer for this purpose because its advertising rates are much less expensive than the Providence Journal.”

The OMA requires the following relating to notice in newspapers:

“***in the case of school committees the required public notice shall be published in a newspaper of general circulation in the school district under the committee’s jurisdiction.” [R.I. Gen. Laws § 42-46-6\(c\)](#)

Although the OMA mandates school committees to publish notices in a newspaper of general circulation, the OMA gives no definition of a “newspaper of general circulation” and we were unable to find a Rhode Island statute that defines a “newspaper of general circulation.” However, [R.I. Gen. Laws § 9-19.1-1](#) defines “newspaper” as the following: “A newspaper or periodical as described in this chapter must be issued at regular intervals and have a paid circulation.” To further help our analysis, “newspaper” is defined as “a paper that is printed and distributed usually daily or weekly and that contains news, articles of opinion, features, and advertising.” Webster's Ninth New Collegiate Dictionary.

Being unable to find a specific state statute that defines “newspaper of general circulation,” we also turned to outside jurisdictions. In New York, “the term newspaper shall mean a paper of general circulation which is printed and distributed ordinarily not less frequently than once a week, and has been so for at least one year immediately preceding such publication or advertisement, and which contains news, articles of opinion, features, advertising, or other matter regarded as of current interest, has a paid circulation...” [NY Gen. Constr. § 60](#). California has a similar statute, “a newspaper of general circulation is...published for the dissemination of local or telegraphic news and intelligence of general character, which has a bona fide subscription list of paying subscribers...” [CA Govt. Code § 6000](#). Arizona's statute states that a newspaper means “a publication regularly issued for dissemination of news of a general and public character at stated short intervals of time...shall not be designed primarily for advertising, free circulation or circulation at nominal rates, but shall have a bona fide list of paying subscribers.” [A.R.S. § 39-201](#).

Although “newspaper of general circulation” is not defined by Rhode Island statute, by looking at the definition of newspaper provided in [R.I. Gen. Laws § 9-19.1-1](#), along with the definition of newspaper in Webster's Ninth New Collegiate Dictionary and outside statutes, we can make an educated judgment as to what the General Assembly intended by the term “newspaper of general circulation.” We first note that, based upon the foregoing, a “newspaper” should be issued at regular intervals and have a paid circulation. We also observe that a “newspaper of general circulation” must contain news, articles of opinion, features, and advertising. Comparing the normal characteristics associated with a “newspaper” to the Bargain Buyer, we conclude that the Bargain Buyer is not a “newspaper.”

*5 The Bargain Buyer describes itself as “[RI's #1 Direct Mail Advertising Shopping Guide](#).” <http://bargainbuyerinc.com/index.html>. We also note that although the Bargain Buyer is issued at regular intervals, it does not have a paid circulation. Instead, the Bargain Buyer is mailed at no cost to each house in Foster. We also observe that the Bargain Buyer does not contain news, articles of opinion or features. The Bargain Buyer is purely an advertising guide. It does not have a section for legal ads and merely spreads them through its advertisements as they arrive. We acknowledge that Attorney Bejma provided this Department various public/political notices. However, this only bolsters the argument that the Bargain Buyer is solely an advertising magazine. Therefore, the Bargain Buyer does not fall under the definition of “newspaper of general circulation.” By concluding that the Bargain Buyer is not a “newspaper” of general circulation, we find that the School Committee violated the OMA.

Mr. Fava also alleges in his complaint that the School Committee failed to provide, or make available, the minutes of the May 24, 2005 meeting. According to Mr. Fava “The actions and discussion of this previous meeting were directly relevant to the actions taken during the June 15, 2005 meeting, yet no minutes were provided for reference” and “[L]acking these critical minutes, I respectfully ask that the votes taken by the School Committee at its June 15, 2005 meeting should be declared null and void, until the proper protocol is followed.”

Attorney Bejma responded to this allegation by stating: "Said minutes were available at the meeting, and were in the possession of the School Committee Chair. However, copies had not been made for the audience. On noting this, Chairperson Mansolillo offered to have copies made. People in the audience indicated that they did not want them. In fact, Mr. Chretien and Mr. Fava themselves had indicated that they did not want the Committee to copy the minutes at that time, but would pick them up sometime over the next few days." The affidavit of Donna Mansolillo supports Ms. Bejma. Ms. Mansolillo attests "When I discovered that copies had not been made, I offered to have copies made for interested members of the audience" and that "A copy machine was readily available for the purpose of making copies of the meeting minutes."

The OMA requires:

"The minutes shall be public records and unofficial minutes shall be made available, to the public at the office of the public body, within thirty five (35) days of the meeting or at the next regularly scheduled meeting, whichever is earlier" [R.I. Gen. Laws § 42-46-7\(b\)](#)

We conclude that no violation occurred as to the minutes. According to the Chairperson of the School Committee, the minutes of the May 24, 2005 meeting were available at the June 15, 2005 meeting. Moreover, the OMA requires only that unofficial minutes be made available for public review at the office of the public body. See [R.I. Gen. Laws § 42-46-7\(b\)](#). There is no requirement under either the OMA or the APRA that minutes physically be available at subsequent meetings of the public body. See *D'Amario v. Town of Smithfield et al.*, PR 00-02; *May v. Town of Foster*, OM 03-08.

*6 Lastly, Mr. Fava alleges that the School Department failed to file electronic notice with the Secretary of State's office for the meeting of June 15, 2005. In response to this contention, Ms. Bejma states "The agenda for the June 15, 2005 meeting was forwarded to the Town Clerk on or about June 3, 2005 at 9:52 a.m. It is unclear as to why notice did not make it on the Secretary of State's web site." Ms. Bejma believes that "It is also possible that the error was with the Secretary of State's office. School Committee member Patricia Fountain has been informed that there has in fact been a 'worm' or 'virus'... that has caused problems with e-filings in the past." But, Attorney Bejma insists "In any case, the Chair of the Foster School Committee has instructed the Superintendent to ensure that the School Department itself performs the filing in the future."

The OMA requires that in addition to other requirements, the public body must provide "electronic filing of the notice with the secretary of state..." [R.I. Gen. Laws § 42-46-6\(c\)](#). In the case at hand, after visiting the Secretary of State's website, we determined that despite Ms. Bejma's acknowledgement, the notice complied with the OMA. According to the Secretary of State's website, notice was filed on June 3, 2005 at 11:13 A.M. <http://www.state.ri.us/eTownCrier/index.php?page=meeting&id=11855>. Moreover, in its response, the School Committee has supplied this Department with the receipt from the Secretary of State's office evidencing submission. The meeting was scheduled for June 15, 2005, so the notice provided was well in advance of the 48 hour statutory requirement. Therefore, no violation accorded as to the electronic notice allegation.

There are two remedies 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) "[t]he court may impose a civil fine not exceeding five thousand (\$5,000) dollars 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\(d\)](#).

In this case, we believe that neither remedy is appropriate. We have found no evidence to support a finding of a knowing or willful violation of the law. Furthermore, we do not believe injunctive relief is appropriate. We observe that the School Committee has published notice of School Committee meetings in the Bargain Buyer for a

period of seventeen years without complaint. Moreover, we observe that despite this deficiency, you attended the June 15, 2005 meeting. That said, this finding serves as notice that the actions discussed herein violated the OMA. The School Committee must conform its postings to this finding. Subsequent, comparable violations may be considered willful and/or knowing.

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 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.

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

Very truly yours,
Adam J. Sholes
Special Assistant Attorney General

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