

THE COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX DISTRICT ATTORNEY

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APR 21 2006

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April 19, 2006

Mr. Ross Perry
Chairman of the Stow Board of Selectmen
Board of Selectmen's Office
Town Building
380 Great Road
Stow, MA 01775

RE: Open Meeting Law

Dear Mr. Perry:

This office received a complaint from James Dunlap on March 9, 2006. Mr. Dunlap alleges that members of the Stow Board of Selectmen ("Board") violated the Open Meeting Law, G.L. c. 39, §§ 23A-24, by using electronic mail ("e-mail") to conduct discussions of public business among a quorum.

Attached to Mr. Dunlap's complaint were sixty-eight pages of e-mails. I have reviewed all the e-mail communications that Mr. Dunlap forwarded to this office. The e-mails, many of which did not reach a quorum and consequently did not violate the Open Meeting Law, essentially pertained to the potential purchase by the town of an eleven acre parcel of land referred to as the Snow property. Other e-mails did reach a quorum. For instance, a draft request for proposals ("RFP") was circulated by Selectman Carole Makary to the entire Board with her request that the matter be placed on the agenda of the next public meeting.

This office has long held that private communications, including e-mail communications, that occur among a quorum of a governmental body and that concern substantive matters within the jurisdiction of the governmental body, violate the Open Meeting Law. Like private conversations held in person or over the telephone, such e-mail conversations deprive the public of the opportunity to attend and monitor these e-mail "meetings" and are a violation of the Open Meeting Law. See OML 99-3 (March 10, 1999) (enclosed).

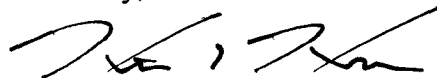
Here, the acts of circulating a document to all Board members and placing an item on the agenda are ministerial in nature and do not run afoul of the Open Meeting Law. The opportunity to conduct, on an individual basis, advance review of a document to be discussed at an upcoming open meeting enhances the Board's efficiency. I point out,

however, that had even one Board member commented via an e-mail that reaches a quorum on the substance of the draft RFP, the opposite would be true. When a quorum of the Board receives and observes the contents of an e-mail discussion, this constitutes participation in the deliberative process to which the Open Meeting Law applies. See OML 04-03 (February 27, 2004) (enclosed). It is because of the high risk of violating the Open Meeting Law that governmental bodies must be vigilant in limiting e-mail messages to matters of a purely housekeeping or administrative nature. See OML 04-03.

Although the documents I reviewed do not indicate that the Board violated the Open Meeting Law, the apparent extent to which the Board communicates via e-mail gives rise to a legitimate concern that the Board easily could transgress to an unintentional violation. In that vein, I commend Chairman Perry for recognizing that further e-mail discussion on the RFP would have been problematic and requesting that any further work on the RFP be done at an open meeting. I also note that, subsequent to a March 7, 2006 conversation I had with Chairman Perry regarding the Board's use of e-mail, he read a section of District Attorney Martha Coakley's Guidelines On The Use Of E-Mail aloud at the March 14, 2006 open meeting and cautioned the Board members to exercise care in their use of e-mail correspondence. I trust that through its heightened attention to this issue, the Board will limit e-mail communications in a manner consistent with the Open Meeting Law.

I request that the Board attach this letter to the minutes of the Board's next open meeting. In addition, the Board should create hard copies of all e-mail communications that reached a quorum and immediately place them in a central file, where they can be provided to the public upon request. Finally, I have enclosed five copies of District Attorney Martha Coakley's Guidelines On The Use Of E-Mail. Please distribute a copy of these Guidelines to each member of the Board. If you have any questions, please do not hesitate to contact me or any member of the District Attorney's Open Meeting Law team at the number below.

Sincerely,



Heather E. Hall
Assistant District Attorney
(617) 679-6540

Copy: Mr. James K. Dunlap
Enclosures