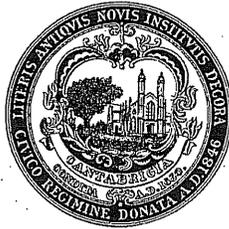


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CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

February 10, 2014

Richard C. Rossi
City Manager
City Hall
Cambridge, MA 02139

***Re: Awaiting Report No. 14-02 Re: Report on Determining Whether Councilors
"replying all" to Emails Addressed to the Council@cambridgema.gov on
Business That May Subsequently Come Before the Council are Unintentionally
Violating the Massachusetts Open Meeting Law***

Dear Mr. Rossi:

In the above-referenced City Council resolution, the City Council requested that you "confer with the City Solicitor to determine whether Councilors 'replying all' to emails addressed to the council@cambridgema.gov on business that may subsequently come before the Council are unintentionally violating the Massachusetts Open Meeting Law." In short, in my opinion, in certain circumstances, Councilors replying-all to emails addressed to all of the individual Councilors would be violating the Open Meeting Law.

Pursuant to the Open Meeting Law, except for executive sessions, "all meetings of a public body shall be open to the public." G.L.c.30A, §20. "Meeting" is defined as "a deliberation by a public body with respect to any matter within the body's jurisdiction," with some exceptions. G.L.c.30A, §18. "Deliberation" is defined in full at G.L.c.30A, §18 as follows:

an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that 'deliberation' shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting [sic] or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.

According to the definition of the word "deliberation", communication by electronic mail among a quorum of a public body, such as the City Council, on business that may subsequently come before the Council, is "deliberation" that must occur at a public

meeting. Also, the second clause of the definition provides by implication that the distribution of reports or documents to a quorum by an email in which even one opinion of a Councilor is expressed is also “deliberation.”

When a non-Councilor sends all Councilors an email addressed to council@cambridgema.gov concerning business that may come before the Council, and even one Councilor hits reply-all and expresses an opinion about the matter, that is forbidden deliberation.

City Council Committees are also subject to the Open Meeting Law and often have quorums that are fewer than five. If the matter emailed concerns an issue before a Council Committee, then a quorum of that Council Committee, which could be as few as two Councilors, would be deliberating via email if they communicated with each other about that matter.

The Attorney General’s Division of Open Government (“DOG”) recently issued a determination concerning these issues. In OML 2014-2 dated January 13, 2014, the DOG found that a single member of the Minuteman Regional Technical School District Committee violated the Open Meeting Law by sending an email to the other committee members in which she expressed her opinion in detail about the renewal of the school superintendent’s contract, a matter that was pending before the Committee. The DOG determined that that constituted improper deliberation because, “it was sent to a quorum of the Committee, expressed [her] opinion on a matter under consideration by the Committee, and was not sent as a document to be discussed at a meeting.” The DOG then stated that in such circumstances: “Expression of an opinion on matters within the body’s jurisdiction to a quorum of a public body is a deliberation, even if no other public body member responds.” The DOG noted that although emails about purely administrative matters in which no opinions are expressed do not constitute deliberation, it is often difficult not to cross the line into impermissible deliberation when emailing. The DOG stated: “Therefore, our best advice continues to be that members of public bodies not communicate over email at all except for distributing meeting agendas, scheduling meetings, and distributing documents to be discussed at meetings.”

I concur with that advice.

Very truly yours,



Nancy E. Glowa