

**TOWN OF PROVINCETOWN – SELECT BOARD
MEETING MINUTES – SPECIAL MEETING
SUBCOMMITTEE
MONDAY, JULY 2, 2018 11:00 AM
TOWN HALL – JUDGE WELSH ROOM**

Select Board Vice Chair/Subcommittee Member Donegan convened the open meeting at 11:03 AM noting the following:

Select Board Members attending: Vice Chair/Subcommittee Member Donegan, Subcommittee Member Robert Anthony

Other attendees: Town Manager David Panagore, Michelle Randazzo of Kopelman (Town Counsel), and Temporary Secretary Linda Fiorella

Recorder: Linda Fiorella.

1. OPEN MEETING LAW COMPLAINT – Gather information related to the complaint from Michael LaChappelle received June 26, 2018 and begin to prepare a response.

Subcommittee Member Donegan noted that the subcommittee was formed to gather information so Town Counsel can prepare a response to the complaint by Michael LaChappelle. The response would then be voted on by the full Board.

Michelle Randazzo, Town Counsel, stated that the response would be addressed to the Attorney General and the complainant would be copied. The complainant could then decide to file a permanent complaint with the Attorney General. Town Counsel also stated that the Board can make changes to the response and she suggested the Board authorize her to send the complaint.

Subcommittee Member Donegan -- For the Public Record, Friday I was asked if a couple of Facebook posts by a colleague influencing my deliberations today and I was not influenced and I believe I can deliberate fairly and fully and prepare this response for the full Board of Selectmen. We had an original version for the record that had other people's comments in it. We have redacted those comments online. So only relevant comments ...

Town Manager Panagore --The threads all may be relevant but the other names have been redacted but for the names of the Select Board Members.

Subcommittee Member Donegan -- We had a set of practices that we used around social media and email and those practices seem to be somewhat changed but in an ambiguous way by this new ruling by the Town Arlington. Does it feel to you like we have all the info we need to evaluate the complaint. The law seems undefined.

Town Counsel Michelle Randazzo -- And the law continues to evolve. That is why the AG recommends using caution when you're a public official and you engage in posting on social media. Public officials have the right to participate in social media the same way everybody else does but you just need to be mindful of the fact that situations like the one we're dealing with right now like this complain can arise. Is it email, text, talking to a group of people? A lot of the same rules apply it's just that Facebook seems

to reach a wider audience. From the perspective of what the rules are clearly you want to be mindful of communications that are on a topic under the board's jurisdiction amongst a quorum. You recall from previous complaints if less than a quorum was involved in a deliberation there is no violation of the Open Meeting Law. and the definition of deliberation the Open Meeting Law is communication amongst a quorum so that's something to always be mindful of.

Discussion continued on sending emails to a group of board members and the variety of elements that come into play regarding when that could or could not be considered an Open Meeting Law violation by the Attorney General due to myriad circumstances.

Subcommittee Member Anthony asked if there was an open agenda item being discussed, if that would make a difference. Town Counsel responded it could but that each instance is specific to that case and therefore the Attorney General is not going to say something is always right or always wrong. She mentioned for example that in the Arlington case the Attorney General did not make any distinction between an open or a closed Facebook page but that does not mean that in every case the Attorney General wouldn't make that distinction.

Subcommittee Member Donegan MOVE the Subcommittee of the Select Board request additional guidance from the Attorney General division of government regarding public officials' participation in Facebook groups that are closed, secret, or otherwise not available for public review which contains content that is relative to matters that are or may be before the public body.

Subcommittee Member Anthony seconded the motion.

Subcommittee Member Donegan-- even if they don't write back at least we go on record that we're wrestling with dealing with a complaint for which a non-lawyer like me it's unclear what the benchmark is.

Town Counsel – just for the record the AG has said in the regulations that they won't generally do that

Town Manager Panagore – in phrasing the question add that it's a general concern to broaden it out that other communities are dealing with this

Discussion continued around passive participation and then Subcommittee Member Donegan requested that Town Counsel describe her general process --that she would review and further investigate a complaint which in certain circumstances could include interviewing members of the Select Board, and then prepare a full response. In some cases a response could include recommendations of ways to do things differently. A response is then submitted to the Board which is free to make changes to it, including any recommendations or could choose to adopt the recommendations which would then be included in the response sent to the Attorney General.

Regarding the specific complaint Town Counsel stated that in the material she had been provided she didn't see an Open Meeting Law violation. There did not appear to be a quorum of the Board communicating amongst themselves directed at each other.

Subcommittee Member Donegan MOVE Town Counsel prepare at the direction of the town manager a response to the complaint by Michael LaChappelle for consideration revision and adoption on July

9th, 2018.

Subcommittee Member Anthony seconded the motion

VOTED

In Favor: 2
Opposed: 0
Abstain: 0

Subcommittee Member Donegan MOVE that the full Board dissolve the subcommittee at the Select Board meeting on July 9, 2018.

Subcommittee Member Anthony seconded the motion

VOTED

In Favor: 2
Opposed: 0
Abstain: 0

Meeting was adjourned at 11:27 a.m.

Minutes transcribed by: Linda Fiorella