

JOHN J. CLIFFORD

— ATTORNEY AT LAW —

March 13, 2010

Rockland Board of Selectmen
242 Union Street
Rockland, MA 02370

RE: Open Meeting Law Violation

Honorable Members of the Board,

I have reviewed the March 11, 2010 letter from the Office of the District Attorney and would like to offer my comments on the findings with regard to alleged Open Meeting Law violations by the Board of Selectmen and the search committee that was formed for the Town Accountant's position. The District Attorney's office has found that there were two violations by the Board of Selectmen and two violations by the search committee. I have a number of concerns with the findings of the District Attorney, not the least of which is that you were never presented with a copy of the written complaint that was filed by Mr. Zupkofska. The District Attorney's procedure for investigation of allegations requires that a complainant reduce the complaint to writing. If that did occur, the Town did not receive a copy, to my knowledge. The District Attorney has also found a violation of the Open Meeting Law for a process that took place almost entirely at a posted and televised meeting of the Board of Selectmen. I am also concerned that the findings are of such a hyper-technical nature that it makes it virtually impossible for public officials, acting with the proper motivations, and a basic understanding of the law, to not be in violation.

The two violations cited by the District Attorney's office for the Board of Selectmen are as follows:

1. That the Board exceeded the posted purpose of the meeting; and
2. That the Board inappropriately formed the search committee in executive session.

Among the posted purposes for the executive session was contract negotiations for a non-union employee. Mr. Hart was under contract as a part-time town accountant, and Mr. Chiocca informed the Board that Hart wished to return to full time status, which would have required revision of his contract. The Board declined to do so in that meeting, and directed Mr. Chiocca to advertise the position and appointed a search committee to review applications received. The Board also voted to arrange a meeting with Mr. Hart to investigate terms for his return to full time. That is the sum and substance of the alleged violation; that the Board voted to meet with Mr. Hart to investigate this further, and that you voted to form a search committee to consider other candidate. There is no allegation that this Board made any substantive decision with regard to Mr. Hart's returning to full time in closed session, beyond the public's view. You are being cited for what I consider to be two minor, technical, and procedural votes.

The two violations cited by the District Attorney for the search committee are as follows:

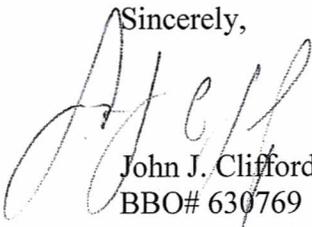
1. That the search committee only presented one applicant for consideration by the Board; and
2. That the search committee should have posted its meeting of June 15, 2009

The first allegation is based on the allegation that somehow, the search committee deliberated outside of a meeting. There are no facts to support that conclusion. The committee members, two members of the Board of Selectmen and the former Chair of the Finance Committee, all came to the same conclusion that there were no candidates worthy of interviewing. They did not meet, speak by phone, or communicate by email. At the meeting televised meeting of the Board of Selectmen on June 15th, they individually reported that they did not find any of the candidates worthy of screening. A cursory review of the applications by any disinterested party would result in the same finding. The second violation, that the search committee should have posted its presence at the Board of Selectmen's meeting on June 15, 2009, is almost inexplicable. Two members, out of the three appointed, were members of the Board of Selectmen. The Board of Selectmen's meeting was posted. This finding would require that every meeting of the Board of Selectmen be posted as a meeting of the search committee, since the two selectmen constituted a quorum of the search committee. The Town Accountant's position was listed on the agenda of the Selectmen's meeting. Any additional posting of a search committee meeting within the meeting of the Board of Selectmen is more than redundant, and serves no purpose with regard to notifying the public.

Having made my disagreements known regarding these findings, I recommend that the Board have the District Attorney's letter read into the record and that the Chair acknowledge these findings, and that the Board will comply with the Open Meeting Law going forward. Frankly, responding to these allegations has already caused the Town to unnecessarily utilize legal resources and staff time. The prospect of the spending more time and money to defend against these charges is not something I recommend.

On the District Attorney's website, there is a message that includes the following: "The Massachusetts Open Meeting Law brings local government to the people. It guarantees the right of the people to be present and to observe the governmental bodies as they conduct public business on the local level. In this manner, citizens in every community have the opportunity to know and to understand the decisions of local boards that directly impact their lives." The hiring process at the heart of these allegations, with the exception of appointing a committee to review applicants, occurred entirely at televised public meetings of the Board of Selectmen. While one member of the Board clearly disagreed with the outcome of that process, that does not justify a finding that there was an intent to hide the process from the public.

Sincerely,



John J. Clifford, Esq.
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cc: District Attorney Timothy Cruz