

MAURA HEALEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

TEL: (617) 727-2200
www.mass.gov/ago

March 11, 2015

OML 2015 – 34

Jerome E. Falbo, Esq.
Falbo, Solari & Goldberg, PA
80 Jefferson Street
Winthrop, MA 02152

Flavio Leo
Deputy Director
Aviation Planning and Strategy
Massachusetts Port Authority
One Harborside Drive
East Boston, MA 02128

RE: Open Meeting Law Complaint

Dear Attorney Falbo and Mr. Leo:

This office received an Open Meeting Law complaint from Attorney Glen Berkowitz, dated December 29, 2014, alleging that the Logan Airport Community Advisory Committee, Inc. (the "Committee") is a public body pursuant to G.L. c. 30A, § 18, that has failed to follow the requirements of the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was first filed with the Committee on October 10, 2014. The Committee responded by letter dated November 3, 2014. Additionally, the Massachusetts Port Authority responded by letter dated October 22, 2014.

Following our review, we find that the Committee is not a public body subject to the Open Meeting Law. In reaching this determination, we reviewed the complaint filed with the Committee, the responses by the Committee and the Massachusetts Port Authority, and the complaint filed with our office. Additionally, we reviewed emails and documents related to the Committee, provided to our office by Mr. Berkowitz.

FACTS

We find the facts as follows. The Committee was formed in the late 1970's by community members united against the proposed construction of a new runway at Logan International Airport. The Committee grew to include 30 cities and towns throughout Eastern

Massachusetts. In 2003, the group incorporated under Massachusetts General Laws, Chapter 180 as “a non-profit, educational charitable purpose under Section 501(c)(3) of the Internal Revenue Code.” The Committee has been designated by the Federal Aviation Administration (the “FAA”) as an independent and discrete participant in the FAA’s Boston-Logan International Airport Overflight Noise Study.

In 2013, the Legislature created the Massachusetts Port Authority Community Advisory Committee (the “MassPort Committee”). See Chapter 46 of the Acts of 2013. The MassPort Committee consists of voting members from communities surrounding Logan Airport and has specific responsibilities including appointing a member to the Board of Directors of the Massachusetts Port Authority, holding hearings, and making recommendations to the Authority, the governor, and the legislature. The MassPort Committee is a public body subject to the Open Meeting Law. See id.

DISCUSSION

The Open Meeting Law defines a “public body” subject to the requirements of the law, in relevant part, as “a multiple member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose.” G.L. c. 30A, § 18. To determine whether an entity is a public body, we consider three factors that apply to all public bodies:

1. The entity must be “within” government and not excluded from the definition of “public body”;
2. The entity must be a “body,” empowered to act collectively; AND
3. The entity must serve a “public purpose.”

See OML 2010-1.¹ Where an entity is not clearly placed within government by law, it may still be “within” government if the government played a significant role in creating or structuring the group, the government has control over the group, and the group primarily performs an essentially governmental function. Id.

In evaluating the first factor, we find that the Committee is not “within” government, and therefore is not a public body. The Committee is organized as a non-profit corporation. The government has no role in appointing members or overseeing the Committee. The government did not play a role in creating or structuring the Committee, and the government does not control the Committee. Finally, the Committee does not primarily perform an essentially governmental function. While it makes recommendations to the Massachusetts Port Authority with respect to flight routes in and out of Logan Airport, it has no legal authority. That the Massachusetts Port Authority may treat the Committee differently than other groups does not make it part of government. Likewise, that the Committee has been designated by the FAA as an independent and discrete participant in the FAA’s Boston-Logan International Airport Overflight Noise Study

¹ Open Meeting Law determinations may be found at the Attorney General’s website, www.mass.gov/ago/openmeeting.

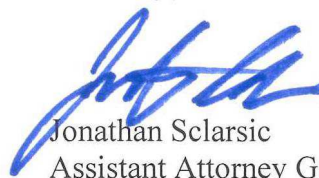
does not make it part of government, but rather reflects the FAA's recognition that the Committee represents stakeholders in the flight route development process.

Mr. Berkowitz provided our office documentation suggesting that the Massachusetts Port Authority has delegated the Committee the responsibility for assembling the MassPort Committee appointees in order to convene the MassPort Committee's first meeting. He suggests that this demonstrates that the Committee is performing a governmental function. However, it appears that the Committee's Chair is taking on the administrative task of assembling the MassPort Committee members who have been appointed by their representative communities. The Massachusetts Port Authority has not empowered the Committee with any actual governmental authority or advisory function. Thus, this fact does not change our conclusion that the Committee is not subject to the Open Meeting Law.

CONCLUSION

We find that the Committee is not a public body subject to the Open Meeting Law, thus it could not have violated the Law. We now consider this matter closed. Please contact our office at (617) 963-2540 if you have any questions.

Sincerely,



Jonathan Sclarsic
Assistant Attorney General
Division of Open Government

cc: Glen Berkowitz, Esq.
Sandra Kuntz, Logan Airport Community Advisory Committee, Inc.

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.