



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MARTHA COAKLEY
ATTORNEY GENERAL

(617) 727-2200
www.ago.state.ma.us

September 5, 2008

Joseph Rizoli
94 Pond Street
Framingham, MA 01702-8116

Re: Alleged Open Meeting Law Violations

Dear Mr. Rizoli:

This letter is in response to your correspondence, the most recent dated July 14, 2008, concerning alleged violations of the Open Meeting Law by the Gay, Lesbian, Bisexual, and Transgender Youth Commission (GLBTYC) with regard to the videotaping of its meetings.

Please be advised that Massachusetts has more than one Open Meeting Law (OML) relevant to this discussion: the State OML, G.L. c. 30A, § 11A½, and the Municipal OML, G.L. c. 39, § 23B. "State" governmental bodies are subject to the State OML and the "local" governmental bodies of cities, towns, and districts are subject to the Municipal OML. *See also* G.L. c. 30A, § 11A and G.L. c. 39, § 23A (providing applicable definitions of "Governmental body"). Assuming that the GLBTYC is subject to an OML at all, it would be subject to the State OML, not the Municipal OML.

Although the two laws are very similar, there are some important differences.¹ On the subject of the "recording" of meetings, the State OML provides as follows:

"A meeting of a governmental body may be recorded by any person in attendance by means of a tape recorder or other means of sonic reproduction except when a meeting is held in executive session; provided, that in such recording there is no active interference with the conduct of the meeting."

M.G.L. c. 30A, § 11A½ (emphasis added).

¹ For example, the State OML is enforced by the Attorney General, and the Municipal OML is enforced by the District Attorney of the county in which the violation occurred. The Municipal OML contains two extra allowable "purposes" for entering into executive session, (8) and (9), while the State OML is limited to purposes (1) through (7). Under the Municipal OML, a civil fine may be assessed against the governmental body for each violation of the law, but under the State OML, no civil fines provisions exist.

However, the corresponding section of the Municipal OML reads as follows:

"A meeting of a governmental body may be recorded by any person in attendance by means of a tape recorder or other means of sonic reproduction or by means of videotape equipment fixed in one or more designated locations determined by the governmental body except when a meeting is held in executive session; provided, that in such recording there is no active interference with the conduct of the meeting."

M.G.L. c. 39, § 23B (emphasis added).

As you can see, the videotaping provisions of the Municipal OML are clearly absent from the State OML. I note that the above-highlighted videotape language was added to the Municipal OML in 1987,² and, although it had the opportunity to amend the State OML with the same language at that time or at a future date, the Legislature did not do so.

Therefore, as the applicable law in this case does not contain provisions that require a state governmental body to permit the videotaping of its meetings, the body may deny such access. See 1983-84 Op. Atty. Gen. No. 4 (March 5, 1984) (The Industrial Accident Board is not required under M.G.L.A. c. 30A, §§ 11A or 11A½ to permit television access to its proceedings, but does have the authority to permit televising or filming of its hearings and meetings if it so chooses.)

Based on the foregoing, and assuming the OML applies at all, the Office of the Attorney General finds no violation of the State OML by the GLBTYC in failing to permit members of the public to videotape its meetings. Consequently, we will close our files on this matter.

Very truly yours,



Lorraine A. G. Tarrow
Assistant Attorney General
General Counsel's Office

cc: Jason A. Smith, Chair, GLBT Youth Commission

² Both G.L. c. 30A, § 11A½ and G.L. c. 39, § 23B were enacted in 1975.