

Mead, Talerman & Costa, LLC
Attorneys at Law

730 Main Street
Suite 1F
Millis, MA 02054
Phone 508.376.8400

www.mtclawyers.com

January 7, 2019

Director
Division of Open Government
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

RE: Open Meeting Law Complaint
Municipality: Town of Rehoboth – Board of Selectmen
Complainant: Katherine Cooper
Alleged Violation Date: 12/17/19
Date Complaint Received: 12/27/19

Dear Director:

In reference to the above captioned matter, I am Town Counsel to the Town of Rehoboth. The Town has received an Open Meeting Law Complaint from Katherine Cooper as noted above and attached as Exhibit A.

As Town Counsel, I was tasked with reviewing the complaints and investigating the allegations contained therein. As more fully set forth in my letter to Ms. Cooper, attached as Exhibit B, the Board of Selectmen has not violated the Open Meeting Law by posting a meeting with less than 48 hours' notice as the topic discussed was emergency in nature.

Sincerely,

A handwritten signature in black ink, appearing to read 'Katherine McNamara Feodoroff'.

Katherine McNamara Feodoroff, Town Counsel

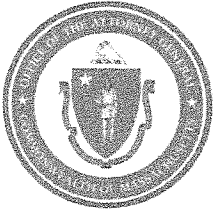
Encls.

cc: Board of Selectmen
Katherine Cooper

Newburyport Office
30 Green Street
Newburyport, MA 01950
Phone 978.463.7700
Fax 978.463.7747

Exhibit A

(Complaint)



OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

Your Contact Information:

First Name: Katherine Last Name: Cooper

Address: 96 New Street

City: Rehoboth State: Ma Zip Code: 02769

Phone Number: 7745658250 Ext. _____

Email: kcooper@drregional.org

Organization or Media Affiliation (if any): Dighton Rehoboth Regional School Committee Chair

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual Organization Media

Public Body that is the subject of this complaint:

City/Town County Regional/District State

Name of Public Body (including city/town, county or region, if applicable): Rehoboth Board of Selectmen

Specific person(s), if any, you allege committed the violation: Chairman Gerald Schwall

Date of alleged violation: 12/17/19

Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

On 12/17/19 at 4:38pm, the Rehoboth Board of Selectmen posted a regular meeting for 12/18/19 at 4:00pm. This posting gave less than 23.5 hours notice and did not meet the 48 hour posting requirement.

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

Properly post meetings and retrain on the Open Meeting Laws. Void actions taken at the improperly posted meeting.

Review, sign, and submit your complaint

I. Disclosure of Your Complaint.

Public Record. Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

Publication to Website. As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.


II. Consulting With a Private Attorney.

The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

III. Submit Your Complaint to the Public Body.

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to openmeeting@state.ma.us.

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: 

Date: 12/27/19

For Use By Public Body
Date Received by Public Body:

For Use By AGO
Date Received by AGO:

AGENDA
Rehoboth Board of Selectmen
Wednesday, December 18, 2019
4:00 PM BOS Regular Meeting

Town Hall
148 Peck Street

1)	4:00 PM	CALL TO ORDER
2)	NEW BUSINESS	
	Action Item 1:	Vote to Approve and Sign DOR Letter
3)	EXECUTIVE SESSION	MGL CHAPTER 30A, §21 (if needed)
4)	ADJOURNMENT	

Posted 12.17.19
@ 4:38 PM
Laura L. Schwall



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Boards & Committees

About Rehoboth



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Board of Selectmen Meeting 4 PM Regular Session

Event Date: Wednesday, December 18, 2019 - 4:00pm

Address

Town Hall
148 Peck Street, Board of Selectmen Meeting Room
Rehoboth, MA 02769
United States
See map: [Google Maps](#)

Related Agenda ▲

12-18-2019 Board of Selectmen Meeting Agenda

SUBMITTED ON DECEMBER 17, 2019 - 4:39PM

REVISED ON DECEMBER 17, 2019 - 4:40PM

Upload file:

12-18-19_bos_meeting_agenda.pdf

Date: Wednesday, December 18, 2019 - 4:00pm

Agenda Items

1. 2020 Board of Selectmen Meeting Agenda (December 11, 2019)

Department Administration

Department Opportunities

Events & Events

Geographic Information System

Principal Employee Appraisal Program

Town Meeting Minutes

Town Newsletters

Town of Rehoboth Personnel Policies Manual

Website Content

Contact Info

Phone:

(508) 252-3758 Ext. 1

Fax:

(508) 252-5342

Address:

148 Peck Street

Rehoboth, MA 02769

United States

See map: [Google Maps](#)

10 Park Street, Rehoboth, MA 02769 | (508) 252-3758

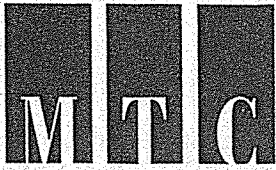
100 State Street, Rehoboth, MA 02769 | (508) 252-3758 | [www.town.rehoboth.ma.us](#)

[Employee Email](#) [Website Disclaimer](#) [Government Websites by CivicPlus®](#)

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Exhibit B

(Response to Complainant)



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Attorneys at Law

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January 7, 2019

Katherine Cooper
96 New Street
Rehoboth, MA 02769

RE: Open Meeting Law Complaint
Municipality: Town of Rehoboth – Board of Selectmen
Complainant: Katherine Cooper
Alleged Violation Date: 12/17/19
Date Complaint Received: 12/27/19

Dear Ms. Cooper:

In connection with the above-referenced matter, as Town Counsel, I have been tasked with reviewing your complaint, received by the Town on December 27, 2019, alleging that Board of Selectmen (the “Board”) violated the Open Meeting Law by failing to post its December 18, 2019 meeting at least 48 hours in advance thereof. In investigating this matter, I have reviewed your complaint and have corresponded with the Chair, Gerald Schwall. Based upon my review of this matter, I respond to your complaint as follows:

The Open Meeting Law requires that, “except in an emergency ... a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays.” G.L. c. 30A, § 20(b). In case of an emergency, the public body should post notice of the meeting as soon as reasonably possible. *Id.* An “emergency” is defined as “a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.” G.L. c. 30A, § 18. The burden of justifying the need for an emergency meeting lies with the public body. See OML 2012-7; OML2010-6. If a meeting topic is proposed after the meeting notice is posted, the public body is encouraged to update its posting to provide the public with as much notice as possible of what subjects will be discussed during a meeting. OML 2015-36.

As a threshold matter, it is relevant to note that tax rate setting requires the written approval of DOR and tax bills cannot be mailed until DOR has signed the tax rate recap. Due to several circumstances, as of December 17, 2019, DOR had not yet approved the Town’s tax rate. Here, the Board needed to take action to rectify this issue, which would enable the Town to submit its tax bills from which the Town generates its revenue.¹

Specifically, the Board convened a meeting on December 18, 2019, posting its notice the day before, on December 17, 2019 at 4:38 p.m. The meeting was limited to one

¹ DOR recommends that the municipalities submit the tax recap worksheet on or before November 15 of each year to allow sufficient time to be able to mail the tax bills by the December 31st deadline. <https://www.mass.gov/doc/chapter-5-setting-the-tax-rate/download>

Newburyport Office
30 Green Street
Newburyport, MA 01950
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item, a vote to approve and sign a letter required by the Department of Review (“DOR”) in order to set the tax rate.² On December 17, 2019, the Administrative Assistant to the Town received a call from DOR advising that there would be a conference call at 1:00 p.m. between representatives of the DOR (accounts and legal) and the Town. Upon receiving the message, the Chair of the Board invited several staff members and Town Counsel to participate in the call; no other members of the Board participated in the call. During the call, the Town was informed that in order to set the tax rate, the Board had to vote to sign a letter agreeable to both DOR and Town Counsel. DOR insisted that the letter be signed before the tax rate could be set.

Following the call, the Chair canvassed the Board to determine when a quorum of the Board was available; it was determined that a quorum was available the following afternoon. After some negotiation, Town Counsel and the DOR agreed on the contents of the letter which was finalized on December 18, 2019 at 3:03 p.m.³ The emergency meeting was convened that day at 4:00 p.m. due to the need to take immediate action so that tax bills could be sent out timely. The meeting began at 4:12 p.m., a short discussion ensued and the vote to approve the letter was taken. The meeting was adjourned at 4:16 p.m. See Addendum A – Minutes.

Based on the foregoing, the Board did not violate the Open Meeting Law by posting a meeting within the 48-hour window as the meeting was emergency in nature. Consequently, the Board of Selectmen respectfully requests that this matter be dismissed without further action. Thank you for your attention to this matter.

Sincerely,



Katherine McNamara Feodoroff, Town Counsel

cc: Board of Selectmen
Division of Open Government

² Though the agenda lists an executive session citing G.L. 30A, § 21A, this agenda item was not taken up by the Board. Thus, no violation of the Open Meeting Law could occur as there was no deliberation by the public body. See G.L. c. 30A, § 18 (A “deliberation” is defined as “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.”).

³ Notably, prior to posting the meeting the Town Clerk checked with the AG’s office to determine if there any additional requirements in convening an emergency meeting. She was told there were no special requirements, only that the Town should post as soon as practical. The meeting was posted on 12/17/19 @ 4:38 PM.

Addendum A

(Minutes)



Office of
SELECTMEN
148 Peck Street
Rehoboth, MA 02769

Tel.: (508) 252-3758
Fax: (508) 252-5342

**BOARD OF SELECTMEN
MEETING WEDNESDAY, DECEMBER 18, 2019
MEETING MINUTES
TOWN HALL-SELECTMEN'S MEETING ROOM**

Present: Selectman Frederick "Skip Vadnais; Selectman Gerry Schwall, Selectman Dave Perry, Selectman James Muri, and Deborah Arruda, Assistant to the Town Administrator.

Absent: Selectman Michael Costello

Topics of Discussion: *Vote to Approve and sign letter to DOR*

A Special Meeting of the Board of Selectmen was called to order at 4:12 p.m.: The Board and the public participated in the Pledge of Allegiance to the Flag.

1.0) Consent Agenda

NEW BUSINESS:

Action Item #1 Vote to Approve and Sign DOR Letter

G. Schwall presented the Board Members with copies of the letter that will be sent to the Director of Accounts at the Department of Revenue. The letter is regarding acknowledgement of the school funding for FY20. A conference call took place on 12/17 with members from DOR, Director of Accounts, Legal Bureau, Deputy Commissioner, and our state local representative along with G. Schwall, D. Arruda and L. Greaves, discussing the school funding.

S. Vadnais motion to approve and sign the letter to the Department of Revenue, second by J. Muri. Vote 4-0

ADJOURNMENT: Selectmen S. Vadnais made a motion to adjourn the Regular Session Meeting at 4:16 PM, second by Selectmen J. Muri. Perry – aye; Muri – aye, Schwall – aye, Vadnais – aye.

Gerald V. Schwall, Chairman

James Muri, Vice Chairman

David A. Perry, Jr., Clerk

Frederick E. Vadnais, Jr., Member

Absent

Michael Costello, Member

Respectfully Submitted,
Deborah Arruda
Assistant to the Town Administrator

Approved: 1/6/2020