



THE COMMONWEALTH OF MASSACHUSETTS
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May 19, 2025

OML 2025 – 62

VIA EMAIL ONLY

Philip Schreffler, Esq.
Associate General Counsel
Cannabis Control Commission
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RE: Open Meeting Law Complaint

Dear Attorney Schreffler:

This office received a complaint from Meghan Dube on January 6, 2025, alleging that the Cannabis Control Commission (the “Commission”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Commission on December 5, 2024,¹ and Associate General Counsel Michael Bergquist responded on behalf of the Commission by letter dated December 26. The complaint alleges that the Commission convened in executive session on November 25 and December 4 for the improper purpose of selecting a new finalist for the position of Executive Director.

Following our review, we find that the Commission violated the Open Meeting Law on November 25 and December 4 by discussing topics in executive session that were not appropriate for executive session. In reaching this determination, we reviewed the Open Meeting Law complaint, the Commission’s response, and the request for further review. We also reviewed, *in camera*, minutes of the November 25 and December 4 executive sessions,² as well as minutes of open sessions held on October 28 and December 18. Finally, we also communicated by email and Teams call with Kajal Chattopadhyay, General Counsel for the Commission; Michael Bergquist, Associate General Counsel for the Commission; and Philip Schreffler, Associate General Counsel for the Commission.³

¹ All dates are in 2024, unless otherwise stated.

² The executive session minutes we reviewed included redactions of discussions concerning two unrelated litigation matters that were not the subject of the present Open Meeting Law complaint.

³ For the sake of clarity, we refer to you in the third person.

FACTS

We find the facts to be as follows. In May of 2024, the Commission began a search for a new Executive Director. During an October 28 open session meeting, the Commission interviewed four finalists for the Executive Director position and ultimately voted to direct the Acting Chair and the Chief People Officer to engage in negotiations with the selected finalist, David Lakeman. At some point thereafter, Mr. Lakeman withdrew himself from consideration for the Executive Director position.

The Commission posted notice for a meeting to be held on November 25. The notice included the following executive session topics:

Closed executive session under G. L. c. 30A, § 21(a)(2) to conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel and G. L. c. 30A, § 21(a)(3) to discuss strategy with respect to collective bargaining or litigation because the open meeting may have a detrimental effect on the bargaining or litigating position of the public body.

The Commission held its executive session on November 25 as scheduled and during the executive session discussed the fact that Mr. Lakeman had withdrawn from consideration, whether to proceed with candidates that had already been interviewed, and the salary range for the Executive Director position.⁴

The Commission posted notice for a meeting to be held on December 4. The notice included the following executive session topics:

Closed executive session under G. L. c. 30A, § 21(a)(2) to conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel and G. L. c. 30A, § 21(a)(3) to discuss strategy with respect to collective bargaining or litigation because the open meeting may have a detrimental effect on the bargaining or litigating position of the public body.

The Commission held its executive session on December 4 as scheduled and during the executive session discussed whether to pursue one of the finalists already interviewed; determined a salary range for the Executive Director position; and discussed concerns about the negotiation process considering Mr. Lakeman's withdrawal.

During a December 18 open session meeting, the Acting Chair summarized the history of the Executive Director search, including Mr. Lakeman's withdrawal, and proposed that the Commission extend an offer to one of the four finalists interviewed on October 28, Travis Ahern. In making this proposal the Acting Chair noted that the Commission had expressed support for

⁴ Because the minutes of the November 25 and December 4, 2024, executive sessions have not yet been released to the public, we do not recount their content in detail here.

Mr. Ahern's candidacy during the public interview held on October 28. After some discussion and a recess, the Commission voted to direct the Acting Chair and the Chief People Officer to engage in negotiations with Mr. Ahern. Mr. Ahern has accepted the position and is currently Executive Director of the Commission.

DISCUSSION

The Open Meeting Law was enacted "to eliminate much of the secrecy surrounding the deliberations and decisions on which public policy is based." Ghiglione v. Sch. Comm. of Southbridge, 376 Mass. 70, 72 (1978). To that end, the Law requires that all meetings of a public body be properly noticed and open to members of the public, unless an executive session is convened. See G.L. c. 30A, §§ 20(a)-(b), 21. Public bodies may enter a closed, executive session for any of ten purposes enumerated in the Open Meeting Law. G.L. c. 30A, § 21(a). The ten executive session purposes are exceptions to the general rule that meetings of a public body shall be open to the public and as such are narrowly construed. See McRea v. Flaherty, 71 Mass. App. Ct. 637, 641 (2008).

Among the ten purposes for executive session is "Purpose 2," which allows a public body to convene in executive session "[t]o conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel." G.L. c. 30A, § 21(a)(2). When convening in executive session under Purpose 2, public bodies should identify, both in their notice and in the open session announcement, the name of the specific nonunion personnel or bargaining unit that is the subject of discussion under Purpose 2, unless disclosure would compromise the public body's negotiating position.⁵ See OML 2020-43; OML 2015-193.⁶

We find that the Commission's discussions on November 25 and December 4 regarding the Executive Director position were not appropriate for executive session under Purpose 2, or any other purpose. At the time of these discussions the Commission had not yet chosen a new finalist for the Executive Director position and was not engaged in negotiations with a particular candidate. Indeed, on November 25 and December 4 the Commission did not discuss strategy with respect to a particular negotiation; instead, the Commission discussed fallout from Mr. Lakeman's withdrawal, how to move forward with the search process, and compensation for the Executive Director position. Discussions regarding recruitment and search processes, how to proceed when a candidate withdraws, and the general compensation range for a position do not

⁵ We note that the notices for the November 25 and December 4 meetings did not identify any particular nonunion employee or position that would be discussed in executive session, nor did they identify the litigation matters to be discussed in executive session. We remind the Commission of its obligation to include such detail both on the meeting notice and in the announcement prior to convening in executive session, unless doing so would compromise the purpose for the executive session. G.L. c. 30A, § 21(b)(3) ("before the executive session, the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called."); see also District Attorney for the N. Dist. v. Sch. Comm. of Wayland, 455 Mass. 561, 567 (2009) ("[a] precise statement of the reason for convening in executive session is necessary . . . because that is the only notification given the public that a [public body] would conduct business in private, and the only way the public would know if the reason for doing so was proper or improper"); OML 2023-120; OML 2020-43.

⁶ Open Meeting Law determinations may be found at the Attorney General's website, www.mass.gov/ago/openmeeting.

fall within the scope of Purpose 2. See OML 2014-30 (executive session improper where “the Committee was not engaged in negotiations or discussing its strategy with respect to upcoming negotiation of nonunion employment contracts”); OML 2013-91 (“While a public body may discuss the contract of specific non-union personnel or discuss a collective bargaining agreement in executive session, general compensation policy must be discussed in open session”); OML 2012-89 (“[G]eneral discussions of salary ranges and other requirements for a vacant position, unrelated to any specific candidate, are not appropriate for executive session.”); OML 2011-34 (questions of candidates regarding “salary ranges and other requirements” not appropriate for executive session under Purpose 2 where they “were asked in the context of choosing a president, not negotiating their contract”); see also OML 2024-30 (finding improper for executive session under Purpose 8 “the Committee’s discussions regarding the fact that three candidates had withdrawn and the discussions regarding how to proceed in the face of this development”). Therefore, we find that the Commission violated the Open Meeting Law by discussing topics in executive session that were not appropriate for executive session.

CONCLUSION

For the reasons stated above, we find that the Commission violated the Open Meeting Law by discussing topics in executive session on November 25 and December 4, 2024, that were not appropriate for executive session. We order the Commission’s immediate and future compliance with the Open Meeting Law and caution that similar future violations could be considered evidence of intent to violate the Law. Additionally, we order the Commission to release the executive session minutes to the public. The Commission may not redact any portion of the minutes related to discussion of the Executive Director position.⁷ See G.L. c. 30A, § 22(f) (providing that executive session minutes may be withheld from the public for so long as disclosure may defeat the lawful purpose of the executive session, provided that the executive session was held in compliance with section 21).

Finally, in light of the violations found here and the related issues addressed in OML 2025-61, we order the Commission to review the Attorney General’s training video number 4 regarding executive sessions as well as our Public Body Checklist regarding executive sessions.⁸

⁷ The minutes of the November 25 and December 4, 2024, executive sessions also record the Commission’s discussions of two unrelated litigation matters. Those discussions were not the subject of the complaint resolved in this determination and we do not order the Commission to release the portions of the minutes that record discussions related to the litigation matters.

⁸ Our training videos can be found on our website at <https://www.mass.gov/info-details/open-meeting-law-training-videos>. Our Public Body Checklists can be found at <https://www.mass.gov/info-details/open-meeting-law-educational-materials>.

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with the Commission or with our office. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



Elizabeth Carnes Flynn
Assistant Attorney General
Division of Open Government

cc: Bruce Stebbins, Acting Chair, Cannabis Control Commission
(via email: Bruce.Stebbins@CCCMass.com)
Kajal Chattopadhyay, General Counsel, Cannabis Control Commission
(via email: Kajal.Chattopadhyay@cccmass.com)
Meghan Dube (via email: [REDACTED])

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.