

52 Forest Street  
Carver, MA 02330

10 February 2012

The Honorable Attorney General Martha Coakley  
One Ashburton Place                      100 Cambridge Street  
Boston, MA 02108-1518                      Boston, MA 02114-2509

RE: Attorney General's Office's Procedures in Issuing Rulings on Open Meeting Law

Dear Attorney General Coakley:

Although I am a Selectman in the Town of Carver, I am writing to you not as a representative of the Carver Board of Selectman but as an individual to express my deep concern with the procedures employed by your office in issuing rulings on the application of the Open Meeting Law. Not only are these procedures and interpretations communicated poorly, in my opinion, but the likely effect is that citizens in cities and towns across the Commonwealth who would otherwise be participants in local government will never again step up to volunteer.

While I am mindful of the recent ruling your office made regarding the Town of Carver's Board of Selectmen's actions in some Executive Sessions on the Town Administrator's contract held by the Board last year, I did not participate in the Executive Sessions in question. As such, this letter can be characterized as an "arms-length" response to your office's handling of that matter, as well as of the process in general.

Your decision to reprimand the Carver Board of Selectmen with respect to circumstances occurring substantially prior to another ruling by your office is troublesome to me, to say the least. To chastise a board for acting in good faith based on the law as the members and Town Administrator understood it in, say, March-May 2011, as the revised July 2010 Open Meeting Law instructed them to do—because they "didn't have the benefit of [your] July 2011 ruling" is astounding and has astounded Boards of Selectmen, Town Administrators, and Town Managers across the Commonwealth. "Retroactive" chastisement of a board acting in good faith, without establishment of clear rules for compliance with the law as your office has interpreted it, is unfair, creates confusion for the public, disrespects volunteer public officials who have donated so much of their time and energy to public service, and is disassociated from an understanding of local government on-the-ground.

As you know, most state agencies draft Rules and Regulations that are then disseminated for public comment, and many such agencies offer public guidance documents as to how state laws and/or rules and regulations within the jurisdiction of that entity should be interpreted by local officials and by the general public. While recognizing that the revised Open Meeting Law has imposed significant enforcement and educational responsibilities on the office of the Attorney General, and that the Division of Open Government has issued a guide and other limited guidance documents, the Division's interpretation of the Open Meeting Law has changed

significantly from commonly understood practices and procedures under the law. However, these significant changes have not been the subject of rules or regulations, notices or advisories, or other communication with cities and towns. Instead, when contacted, your office simply responded by saying that each decision is posted on your office website. This begs the question, if local officials cannot take the new Open Meeting Law at face value, as it is written, how can we be expected to know in advance how your office will "interpret" the law without any accompanying guidance documents publicly disseminated by your office? Are we to hire a full-time person at the taxpayer's expense to spend each day checking your office's website so that our local officials will not run afoul of your next whimsical interpretation? May we expect you to issue retroactive rulings on the dozens of "misinterpretations" by local officials acting in good faith that no doubt took place across the Commonwealth since July 2010? While this result may satisfy some interest groups, the thousands of municipal volunteers actually seeking to do the *business* of local municipal government will inevitably be discouraged and unfairly targeted. The approach of the Division of Open Government seems directly at odds with the message conveyed to municipal officials during the transition period from the prior version of the Open Meeting Law.

Finally, this process of issuing interpretations "retroactively" and penalizing local officials for not knowing what hidden meanings your office will find on a day-to-day basis is clearly out of touch with the reality of how town government works. Small town government works because of volunteers. It's that simple. If application of the Open Meeting Law is unpredictable and the Division of Open Government fails to afford local officials the respect to reach reasonable resolutions of complaints, it will make it unreasonably difficult for citizen volunteers to be able—or even want—to participate. Small town government will not work under such circumstances, and it simply enables those who do not like any form of government to further undermine the efforts of well-intentioned volunteers. Those who do not like any form of government already understand this and they work towards that end every day. Is your office going to continue to enable the dismantling of local government by those who would like nothing better?

I look forward to your personal and timely response to the concerns I have outlined and how your office plans to remedy these concerns proactively.

Sincerely yours,

Sarah G. Hewins, Ph. D.  
Member, Carver Board of Selectmen

Cc: The Honorable Deval Patrick, Governor of Massachusetts  
Board of Directors, Massachusetts Municipal Association  
Richard J. LaFond, Town Administrator  
David R. Smith, Editor, *The Carver Reporter*  
Robert C. Knox, Reporter, *The Boston Globe*