

LEGAL ALERT

To: All School Committee Members and Superintendents
From: Stephen J. Finnegan Esq., MASC General Counsel
Re: **Boelter v. Board of Selectman of Wayland (SJC- 12353) Date of the decision is April 5, 2018.**
Date: April 9, 2018

Town Administrator's Evaluation by Selectmen that followed the longstanding practice was found by the Supreme Judicial Court to violate the Open Meeting Law.

This decision must be adhered to by School Committees when evaluating the Superintendent.

While this decision involved the distribution of the Town Administrator's evaluation to the Board of Selectmen, it followed the advice given to school committees for evaluation of the superintendent as found on the Attorney General's website. The chair of the board had circulated to all board members, in advance of the public meeting where the town administrator's evaluation was to take place, board members' individual written evaluations, as well as a composite written evaluation, of the town administrator's performance. The board made public all written evaluations after the open meeting. The issue before the SJC was whether the board violated the Massachusetts open meeting law, G. L. c. 30A, §§ 18 and 20 (a), which generally requires public bodies to make their meetings, including "deliberations," open to the public.

On January 3, 2012, the five-member board held an open meeting during which it reviewed the procedures it intended to follow in conducting the annual performance evaluation of the town administrator. The board agreed that, by the end of the month, its members would submit individual evaluations to the chair, who would compile the evaluations and draft a composite evaluation. The composite evaluation was to be distributed to all board members in advance of the scheduled March 28, 2012, open meeting at which the board planned to discuss the town administrator's performance and issue a final written evaluation. The Court acknowledged that the procedure the board chose to follow was largely consistent with the Attorney General's guidance to public bodies regarding performance evaluations, which was available on the Attorney General's Web site as follows:

"May the individual evaluations of an employee be aggregated into a comprehensive evaluation?"

"Yes. Members of a public body may individually create evaluations, and then submit them to an individual to aggregate into a master evaluation document to be discussed at an open meeting. Ideally, members of the

public body should submit their evaluations for compilation to someone who is not a member of the public body, for example, an administrative assistant. If this is not a practical option, then the chair or other designated public body member may compile the evaluations. However, once the individual evaluations are submitted for aggregation there should be no deliberation among members of the public body regarding the content of the evaluations outside of an open meeting, whether in person or over email."

In January of 2013 the Attorney General responded to a complaint filed by a registered voter of Wayland claiming that the procedure used by the Board violated the Open Meeting Law. The Attorney General found that the board's conduct had not violated the Open Meeting law. Five Wayland registered voters then filed a complaint in the Superior Court and the Judge found that the Board violated the Open Meeting law, and further stated that the opinion of the Attorney General be stricken. Wayland appealed this decision.

The SJC concluded that the Board's conduct violated the Open Meeting Law by circulating individual and composite evaluations, expressing the opinion of the Board members to a quorum in advance of the public meeting, thereby affirming the decision of the Superior Court. However, the SJC held that the lower court did not have the authority to strike the opinion of the Attorney General.

The SJC provides some guidance to local governments by concluding that the result in this case would have been different if the board had made the individual and composite evaluations publicly available before the open meeting. For example, the board could have posted the evaluations on its Web site and made paper copies available for inspection at or about the time that the evaluations were circulated among a quorum of board members.

I will be in communication with the Attorney General's Office concerning this matter, and will keep you advised of further developments. I advise school committees to contact its Legal Counsel, and to adhere to this opinion when evaluating the superintendent.