

To the Selectboard of the Town of Charlotte:

April 3, 2016

Written Notice of Violation of Vermont Open Meeting Law

I, John R. Snow, a resident and taxpayer in the town of Charlotte, Chittenden County, Vermont do hereby allege that on March 28th, 2016 the Town of Charlotte Selectboard did knowingly and intentionally enter into executive session without fulfilling the requirements of the Vermont Open Meeting Law and further that the Selectboard took binding action during that executive session in violation of the Vermont Open Meeting Law.

Relevant Facts:

At a warned meeting of the Selectboard on Monday, March 28, 2016 the following occurred:

1. At approximately 7:20PM the Chair opened the agenda item "Town Clerk/Treasurer pay issues". The Chair indicated the agenda would allow for one hour on this topic and that after a period of public comment the Selectboard would go into Executive Session.
2. During the public comment period the Selectboard were asked by a member of the public to justify their intention to enter executive session. The speaker cautioned that the board would likely need to establish a basis of significant disadvantage from premature public disclosure. The speaker further stated that given the long history of this topic being discussed in detail in public session and the very short period of time (minutes) within which the board stated an intention to act it seemed implausible that such a significant disadvantage might exist.
3. In response the Selectboard indicated that it had opinion of counsel saying it was "OK" to go into Executive session and that they would be relying on this opinion.
4. Shortly thereafter the Chair called for a motion to enter Executive Session which was made, seconded and voted unanimously.
5. As the board rose to exit there was a query from the public as to what exception they were using to enter executive session, the board indicated that they were relying upon 1.VSA 313(a)1A and 1B.
6. The members of the Selectboard then exited the public hall.
7. Approximately 20 minutes later the Selectboard returned to the public hall and exited executive session. Immediately thereafter the Chair reported to the public that the Board had agreed to make an exceptional review of the job rating for the role of Clerk/Treasurer and employ the services of a third party consultant to assist the process. No motion to this effect was made, no discussion held and no vote taken.
8. The Chair then closed this portion of the agenda and moved to the next item.

Relevant Law:

Vermont's Open Meeting Law protects the right of the public to witness the deliberations and actions of its public bodies and provides a limited number of exceptions under which public bodies may meet in executive session:

Title 1, Chapter 5: Common Law; General Rights, Subchapter 002: Public Information

• **§ 313. Executive sessions**

(a) No public body may hold an executive session from which the public is excluded, except by the affirmative vote of two-thirds of its members present in the case of any public body of State government or of a majority of its members present in the case of any public body of a municipality or other political subdivision. A motion to go into executive session shall indicate the nature of the business of the executive session, and no other matter may be considered in the executive session. Such vote shall be taken in the course of an open meeting and the result of the vote recorded in the minutes. No formal or binding action shall be taken in executive session except for actions relating to the securing of real estate options under subdivision (2) of this subsection. Minutes of an executive session need not be taken, but if they are, the minutes shall, notwithstanding subsection 312(b) of this title, be exempt from public copying and inspection under the Public Records Act. A public body may not hold an executive session except to consider one or more of the following:

(1) after making a specific finding that premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage:

(A) contracts;

(B) labor relations agreements with employees;

Allegation:

I allege that the Town of Charlotte Selectboard committed two violations of this law by:

1. entering into executive session without making a specific finding that premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage; and

2. taking formal and binding action in executive session by committing the town to an exceptional review of the Town Clerk/Treasurer pay grade potentially leading to an automatic salary change under the town's salary administration program.

I further allege that these violations were intentional and willful based on the fact that the Selectboard had previously sought and received opinion of counsel on the matter of executive session and the fact that public comment immediately preceding the vote explicitly cautioned the Selectboard regarding the requirements of the law.

Remedies:

In order to remedy these violations, the Town of Charlotte Selectboard must do the following within 14 days:

1. acknowledge in public session duly warned that its actions on March 28th as noted above are violations of Vermont law; and
2. void the binding actions taken in the subject executive session (if the board wishes to pursue these same actions, it must have a vote and discussion in public session duly warned); and
3. indicate what steps the Selectboard will take to ensure this violation does not occur again in the future. Such assurance should include a program of Selectboard member education conducted by an appropriate expert during a public session duly warned.

If the Selectboard fails to effect the remedies listed above or denies the allegations or fails to respond to this written notice within 7 days, it is my intention to file suit in the Civil Division of the Superior Court for Chittenden county.

Respectfully,

John R. Snow
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Charlotte, VT 05445