



## TOWN OF MONTEREY

435 Main Rd. P.O. Box 308

Monterey, MA 01245

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

January 23, 2012

Re: OML Complaint

Attorney General Martha Coakley,

Our Board is in receipt of an Open Meeting Law complaint filed by Jonathan Sylbert on January 9, 2012 with an alleged violation date of January 4, 2012. The Board discussed this complaint at our January 9<sup>th</sup> Select Board meeting and have determined that a violation did not occur.

Mr. Sylbert claims in his description of the alleged violation that we (Wayne Burkhart and Scott Jenssen) unintentionally deliberated and expressed our opinion outside of an open session.

The Open Meeting Law defines deliberation 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.**" **Distributing a meeting agenda, scheduling or procedural information, or reports or documents that may be discussed at the meeting will not constitute deliberation**, so long as the material does not express the opinion of a member of the public body. E-mail exchanges between or among a quorum of members of a public body discussing matters within the body's jurisdiction may constitute deliberation, even where the sender of the email does not ask for a response from the recipients. **To be a deliberation, the communication must involve a quorum of the public body. A quorum is usually a simple majority of the members of a public body. Thus, a communication among fewer than a quorum of the members of a public body will not be a deliberation**, unless there are multiple communications among the members of the public body that would together be a communication among a quorum of members.

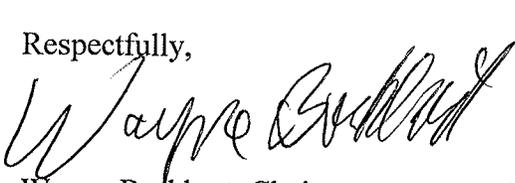
The email that Mr. Sylbert refers to in his description was written by our secretary and stated, "*I just spoke with both Scott and Wayne and both of them are fine with the negotiations being held in Executive Session on Monday with the understanding that after an agreement on all the items has been reached the minutes will then be made public.*" After several more emails between Mr. Sylbert in which he stated that the above statement made by our secretary was a deliberation of the Board and violation of the OML, our secretary responded via email to clarify with the following, "*There was **not a quorum** when I spoke to Wayne or Scott as it was separately and on the phone as we have done on several other occasions for similar events just like this one. We are also exempt in this instance because it was an agenda question and I was only confirming that 2 of the 3 members were ok with the Executive Session being listed on the agenda so that the public would be aware. The understanding I noted below is what Maynard and myself have*

*conveyed as the employees intentions and reasons for requesting the executive session, that was NOT the opinion of Wayne or Scott nor did either of them at any point make that statement."*

Based upon the above definitions of a deliberation taken from the Attorney General's website and the supporting facts of the matter stated above, we the public body requested to make a determination, have unanimously agreed that there was no violation made and request that the Attorney General's Office make the same finding and close the matter.

Please feel free to contact us if you wish to discuss this further.

Respectfully,



Wayne Burkhart, Chair  
Monterey Select Board



Scott J. Jenssen

SB/mn

Enc: Open Meeting Law Complaint form filed

cc: Jonathan Sylbert, P.O. Box 463 Monterey, MA 01245  
Town Counsel, Jeremia Pollard  
Town Clerk



(2) *WA*

## 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: Jonathan Last Name: Sylbert

Address: PO Box 463

City: Monterey State: MA Zip Code: 01245

Phone Number: +1 (413) 528-1216 Ext. 3117

Email: jsylbert@mac.com

Organization or Media Affiliation (if any): \_\_\_\_\_

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): Monterey Select Board, Monterey, Berkshire County

Specific person(s), if any, you allege committed the violation: Select Board members Wayne Burkhart and Scott Jensen

Date of alleged violation: Jan. 4, 2012

**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 January 4th, Monterey Select Board members Wayne Burkhart and Scott Jensen unintentionally deliberated and expressed their opinion, outside of open session, to negotiate with town employees in executive session. My evidence for this derives from an email written by the town interdepartmental secretary that reads as follows: "I just spoke with both Scott and Wayne and both of them are fine with the negotiations being held in Executive Session on Monday with the understanding that after an agreement on all the items has been reached the minutes will then be made public." I believe this communication falls outside the exception to Open Meeting Law because they not only discussed whether to post an agenda item but materially deliberated and expressed an opinion, and that their communications constitute a deliberation of a quorum because open meeting law states that if there are "multiple communications among the members of the public body that would together be a communication" it constitutes "a quorum of members." Thus their communication may be a violation of Open Meeting Law.

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.

I would like the public body to determine if this action was a violation and to take steps to ensure that in the future any town business conducted outside of open meeting adheres to Open Meeting Law.

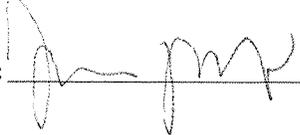
**Review, sign, and submit your complaint**

**Read this important notice and sign your complaint.**

Under most circumstances your complaint will be considered a public record and be available to any member of the public upon request.

I understand that when I submit this complaint the Attorney General's Office cannot give me legal advice and cannot act as my personal lawyer.

I certify that the information contained on this form is true to the best of my knowledge.

Signed:  \_\_\_\_\_

Date: 1/9/12

For Use By Public Body  
Date Received by Public Body:

For Use By AGO  
Date Received by AGO: