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May 13, 2010

Attorney General Martha Coakley
Office of the Attorney General
One Ashburton Place, 20th Floor
Boston, Massachusetts 02108

Via Email, Fax and Overnight Certified Mail

Attn: Robert Nasdor, Division of Open Government

Re: Open Meeting Law Violation

Dear Attorney General Coakley:

We are writing to ask you to investigate an open meeting law violation that occurred on Monday, May 10, 2010 during a hearing conducted by the Massachusetts Department of Agricultural Resources ("DAR").

The meeting occurred pursuant to a notice advertising changes to the DAR's regulations regarding raw milk. It took place in meeting rooms D and E on the second floor of 100 Cambridge Street in Boston. A number of people (we estimate between 50 and 75) were prevented from entering the hearing room by DAR staff who stated that allowing additional people to attend the hearings would exceed the rooms' capacity. These people were directed to another room that lacked any visual or sound connection to the hearing room. Only as individuals left the hearing room were additional people allowed, on a one-by-one basis, to enter the hearing room. As a result, a large number of interested persons were prevented from attending the meeting at all.

We strongly believe that preventing people from entering the meeting violates the open meeting law, which provides:

All meetings of a governmental body shall be open to the public and any person shall be permitted to attend any meeting except as otherwise provided by this section.

G.L. c. 30A, § 11A1/2. In this case many "person[s]" were not "permitted to attend" this meeting. No exceptions in § 11A ½ apply, as there was no declaration of an executive session and no basis for excluding anyone. The same is true under the version of the Open Meeting Law that will become effective on June 1, 2010. G.L. c. 30A, § 20(a).

There is no exception for a room that is too small, as DAR claimed. We recognize that there are codes limiting the number of people in hearing rooms. That places the burden on the agency to secure a large enough room or at least to provide for video and audio feeds into and from any room holding people who are turned away from the live hearing. Responsibility for the size of the room falls upon the agency having control over the arrangements, not upon members of the public who are trying to exercise their rights to address and petition their government. Failing to provide adequate space cannot be allowed as an excuse for non-compliance with the open meeting law.

Moreover, the DAR itself anticipated a large amount of interest in its proposed regulations. In an attempt to reduce attendance, it posted an announcement on its website after hours on Friday, May 7, attempting to withdraw a controversial provision of the proposed regulations and contacted at least one large organization, which withdrew its request for its members to attend. We believe that enforcing the government's open meeting responsibilities to allow "any person . . . to attend any meeting" is particularly important when the agency tries to match room size and audience by taking active steps to reduce attendance instead of providing a large enough room, with overflow capability by video and audio feed. The DAR is not, after all, without resources to comply with the minimal open meeting burdens that the legislature has imposed upon it.

We respectfully request an investigation.

Signed,

Alexis Baden-Mayer, Esq.

Political Director

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cc: Deval Patrick, Governor

Ian A. Bowles, Secretary

Scott J. Soares, Commissioner