

Libertarian Party of Central New Jersey

Open Government Task Force

John Paff, Task Force Chairman

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November 17, 2006

William F. Lamb, First Assistant
Middlesex County Prosecutor's Office
25 Kirkpatrick St, 3rd Floor
New Brunswick, NJ 08901

(via Fax only to 732-745-2791)

RE: Monroe Township Board of Education
Open Public Meetings Act

Dear First Assistant Prosecutor Lamb:

The Libertarian Party of Central New Jersey has created an Open Government Task Force of which I am the chairman. The Task Force's goal, and my personal goal¹, is to bring all local government agencies in our tri-county area (Somerset, Middlesex and Union Counties) into full compliance with the Open Public Meetings Act, Open Public Records Act and other open-government statutes and regulations.

The Open Public Meetings Act, N.J.S.A. 10:4-17², empowers your office to enforce monetary penalties against officials who knowingly violate the Act. We assert that the Monroe Township Board of Education has violated the Act and ask that you investigate the following matters and take whatever action—perhaps a letter of admonition, if you find that a monetary penalty is too severe—you deem appropriate.

Following this cover letter are the minutes from the Board's October 18, 2006 meeting. I wish to invite your attention to two sections: a) the item at the bottom of page one revealing that the Board "discussed the suspension of pay for" a person whose name has been suppressed; and b) the item near the top of page two revealing that the Board "discussed the rate of pay for substitute nurses."

As to the first item, while we certainly agree that the Board was permitted to **discuss**³ the employee's suspension without the public being present, we assert that it was improper for the Board to suppress the name of the suspended employee from its meeting minutes. As explained by the New Jersey Supreme Court

¹ I bring this matter to your attention both in my personal capacity and as the Task Force chairman.

² In case you choose not to act in this matter, we specifically reserve our right to also enforce the Board's future compliance through the civil remedies provided by N.J.S.A. 10:4-16 or other remedies provided by law.

³ Such a private discussion is specifically permitted by N.J.S.A. 10:4-12(b)(8).

The purpose of the personnel exemption is to facilitate the process by which the public body makes personnel-type decisions, permitting the debate and deliberation to be conducted without public scrutiny or participation. But the exemption is designed to enable the public body to determine the appropriate action to be taken, not to withhold from the public either the public body's determination or the reasons on which its determination was based. In our view, it would be anomalous to interpret the Open Public Meetings Act, enacted by the Legislature to enhance the public's access to and understanding of the proceedings of governmental bodies, in a manner that foreclosed the public's right to obtain material and information vital to its ability to evaluate the wisdom of governmental action.

South Jersey Publishing Co. v. New Jersey Expressway Authority, 124 N.J. 478, 493-94 (1991).

Clearly, the public cannot “evaluate the wisdom” of this employee’s suspension unless it knows the employee’s identity.

As to the second item, The Board apparently believed that privately discussing substitute nurse pay rates was authorized by N.J.S.A. 10:4-12(b)(8) which allows for certain “personnel matters” to be discussed outside of public view. That exception, however, permits private discussion of “[a]ny matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of, promotion or disciplining of any **specific** prospective public officer or employee or current public officer or employee employed or appointed by the public body . . .” (emphasis supplied).

As you can see, the personnel exception intends to allow the Board to privately discuss matters relating to a specific employee. Thus, while it is entirely appropriate for the Board to privately discuss whether or not Crossing Guard Jones should be fired or promoted, general policy matters—such as general pay rates—that are not specific to an identifiable employee should be discussed publicly.

When the Legislature enacted the Open Public Meetings Act in 1975, it declared that

. . . the right of the public to be present at all meetings of public bodies, and to witness in full detail all phases of the deliberation, policy formulation, and decision making of public bodies, is vital to the enhancement and proper functioning of the democratic process; that secrecy in public affairs undermines the faith of the public in

government and the public's effectiveness in fulfilling its role in a democratic society . . .

We believe that the Monroe Board of Education, by a) withholding information from the public and b) discussing matters in private that ought to be discussed in public, thwarts rather than advances this legislative policy. Accordingly, we call upon the your office to vindicate the public's interest in this matter.

Thank you very much for your kind attention. We look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Paff", with a large, stylized flourish at the end.

John Paff

cc. Wayne Holliday, Board Secretary (via email PDF attachment)
Bertram E. Busch, Board Attorney (via email PDF attachment)

Closed Session, October 18, 2006

CONFIDENTIAL
Closed Session

The Board of Education convened to closed session at 6:39 p.m.

Board Members Present

- Ms. Kathy Kolupanowich, Board President
- Mr. Lew Kaufman, Board Vice President
- Mr. Marvin I. Braverman
- Ms. Carol Haring
- Mr. Joseph Homoki
- Mr. John Leary
- Ms. Rita Ostrager
- Ms. Amy Speizer

Board Member Absent

- Ms. Kathy Leonard

Jamesburg Board Member Representative Present

- Ms. Patrice Faraone

Staff

- Dr. Ralph Ferrie, Superintendent of Schools
- Mr. Wayne Holliday, Business Administrator/Board Secretary
- Dr. Edward J. Forsthoffer, Assistant Superintendent of Personnel
- Dr. Christopher Tienken, Assistant Superintendent of Curriculum & Instruction
- Mr. Robert Goodall, High School Principal (arrived 7:15 p.m./departed 7:37 p.m.)
- Mr. David Kirk, K-12 Supervisor/Athletics/Health & PE/Co-curricular activity (arrived 7:15 p.m./departed 7:37 p.m.)

Board Attorney

- Mr. Bertram E. Busch, Esq., Busch and Busch, LLP

Negotiations

Members of the Board of Education and administrators discussed the "Memorandum of Agreement" between the Monroe Township Board of Education and the Monroe Township Education Association.

Personnel

Dr. Forsthoffer, Dr. Ferrie and Members of the Board of Education discussed the suspension with pay for [REDACTED]

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Personnel

Mr. Goodall, Mr. Kirk, Dr. Ferrie, Dr. Forsthoffer and Members of the Board of Education discussed the "Administrative Report" for [REDACTED]
[REDACTED]

Personnel

Dr. Ferrie and Members of the Board of Education discussed the rate of pay for substitute nurses.

Personnel

Dr. Ferrie and Members of the Board of Education spoke about tuition reimbursement for non-affiliated technology staff.

Legal

Mr. Busch indicated that Township Assistant Attorney, Peg Schaffer submitted [REDACTED]
[REDACTED] to the Green Acres Division of the Department of Environmental Protection as related to the land exchange regarding the new High School.

Legal

Mr. Busch spoke about the mediation regarding [REDACTED]
[REDACTED].

Legal

Mr. Busch and Members of the Board of Education discussed the legal ramifications related to [REDACTED]
[REDACTED]

Adjournment

The closed session adjourned at 7:50 p.m.

Respectfully submitted,


WAYNE HOLLIDAY
BOARD SECRETARY/BUSINESS ADMINISTRATOR