

Libertarian Party of Central New Jersey

*Open Government Task Force
P.O. Box 5424
Somerset, NJ 08875-5424
Phone: 732-873-1251
Email: paff@pobox.com
September 1, 2005*

Bruce J. Kaplan, Esq. Prosecutor
Middlesex County Prosecutors Office
25 Kirkpatrick St – 3rd Floor
New Brunswick, NJ 08901

(via Fax only to 732-745-2791)

RE: Old Bridge Township
Ordinance No. 29-2005

Dear Prosecutor Kaplan:

The Libertarian Party of Central New Jersey (LPCNJ) has created an Open Government Task Force of which I am the chairman. The Task Force's goal is to bring all local government agencies in our tri-county district (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.

We are concerned that the captioned, proposed ordinance (copy enclosed) is partially invalid and unenforceable. At issue is the provision within Section 2 which considers the minutes of the Township Council's closed sessions to be "confidential and privileged" and prevents their public disclosure absent a formal motion and affirmative vote by the Township Council.

The Open Public Meetings Act, requires a public body which legitimately conducts a closed meeting to "nevertheless . . . make the minutes of that meeting 'promptly available to the public' unless full disclosure would subvert the purpose of the particular exception." Payton v. New Jersey Turnpike Authority, 148 N.J. 524, 556-57 (1997).

The Payton court goes on to state that

In the vast majority of cases in which full disclosure would have an adverse impact on the purpose of the particular exception, other methods of maintaining confidentiality can be achieved, such as redacting the specific information that would undermine the exception. We stress, however, that, given the Legislature's strongly stated intent to effectuate broad public participation in the affairs of governmental bodies, few cases will require even partial nondisclosure.

The Council is obligated, under state law, to make the non-exempt portions of its closed session minutes “promptly available” to the public. Since the Council is without authority to limit or restrict the public’s state-established right of access to government records, the proposed ordinance is invalid to the degree that it extends confidentiality of closed session minutes beyond the state’s “promptly available” mandate.

We ask that you consider this question and inform us of your findings and conclusions.

Thank you for your attention to this matter.

Sincerely,

/s/ John Paff
Task Force Chairman

TOWNSHIP OF OLD BRIDGE
ORDINANCE NO. 29-2005
ORDINANCE AMENDING CHAPTER II,
ADMINISTRATION, SECTION 2-3.8 OF
REVISED GENERAL ORDINANCES OF THE
TOWNSHIP OF OLD BRIDGE

BE IT ORDAINED by the Township Council of the Township of Old Bridge, County of Middlesex, State of New Jersey as follows:

SECTION 1: PURPOSE

The purpose of this amendment is to amend Chapter II, Administration, Section 2-3.8 of the revised general ordinances of the Township of Old Bridge.

SECTION 2: AMENDMENT TO CHAPTER II, ADMINISTRATION, SECTION 2-3.8 OF REVISED GENERAL ORDINANCES Chapter II, ADMINISTRATION, Subsection. 2-3.8(f) is hereby amended to read as follows:

Section 3.8(f) Executive Sessions.

The Township Council shall keep reasonably comprehensive minutes of its Executive Sessions, showing the time and place, the members present, the subjects considered, the actions taken, and any other information required to be shown in the minutes by law. The executive session minutes, which need not be verbatim, shall be maintained by the Township Clerk, and shall remain the confidential and privileged property of the Township Council. Said minutes shall be retained by the Township Clerk, and shall not be released to anyone other than a Council member, the Mayor, the Business Administrator or the Township Attorney, without a formal motion for release to a third party and the affirmative vote of the Township Council.

SECTION 3: INCONSISTENT ORDINANCES

All ordinances or parts of ordinances inconsistent with or in conflict with this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 4: PARTIAL INVALIDITY

If any section, paragraph, clause or provision of this ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, clause or provision so adjudged and the remainder shall be deemed valid and effective.

SECTION 5: EFFECTIVE DATE

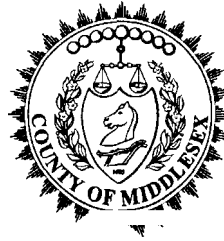
- A. Except as set forth, at subparagraphs B and C hereof, this Ordinance shall take effect on the earlier of the following dates: (1) on the date the Mayor affixes his/her signature thereto and returns same to the Municipal Council by delivering it to the Municipal Clerk pursuant to NJSA 40A:69A-41 or (2) on the tenth day following presentment to the Mayor of the ordinance pursuant to NJSA 40:69A-41 applicable when the Mayor has failed to return the Ordinance; whichever occurs first.
- B. If the Mayor vetoes the ordinance (in the manner set forth at NJSA 40:69A-41), this Ordinance

shall become effective upon the Township Council's vote to override the Mayor's veto.

- C. Notwithstanding any other provision hereof, this Ordinance shall not take effect less than twenty (20) days after its final passage by the Council and approval by the Mayor, where such approval is required, unless time Council shall have also adopted a resolution declaring an emergency and at least two-thirds (2/3) of all the members of the council vote in favor of such resolution.

TAKE NOTICE that the above ordinance was introduced at a meeting of the Township Council of the Township of Old Bridge, Middlesex, County, New Jersey, held in the Municipal Complex, One Old Bridge Plaza, Old Bridge, New Jersey on August 22, 2005 and that the same will be further considered for final passage at a meeting of the Township Council of the Township of Old Bridge, Middlesex County, New Jersey, to be held in the Municipal Complex, One Old Bridge Plaza, at 7:30 p.m. on September 12, 2005 or as soon thereafter as said matter may be reached, at which time all those interested will be given a opportunity to be heard concerning the same.

Township of Old Bridge
Rose-Marie Saracino
Township Clerk
(80.96) 21718



Bruce J. Kaplan
Prosecutor

William F. Lamb
1st Assistant Prosecutor

Julia L. McClure
Deputy 1st Assistant Prosecutor

Dennis W. Watson
Chief

Joseph W. Krisza
Deputy Chief

**COUNTY OF MIDDLESEX
PROSECUTOR'S OFFICE**
25 KIRKPATRICK STREET, 3RD FLOOR
NEW BRUNSWICK, N.J. 08901
(732) 745-3300
FAX (732) 745-2791

September 1, 2005

John Paff, Chairman
Open Government Task Force
P.O. Box 5424
Somerset, New Jersey 08875

**RE: Proposed Old Bridge Township
Ordinance No. 29-2005**

Dear Mr. Paff:

This is to advise that your recent letter to Prosecutor Kaplan regarding the validity of a proposed Old Bridge Township ordinance has been referred to me for review and response. As I understand, your organization is concerned that provisions of the ordinance may be in conflict with the Open Meetings Act and/or other statutes.

I regret that we are unable to respond as it is inappropriate for the Middlesex County Prosecutor's Office to render advisory opinions regarding legislation. This is particularly the case where, as here, the enactment is entirely civil in nature. If memory serves, however, the Attorney General's Office periodically publishes opinions on subjects such as yours. Accordingly, I respectfully suggest that you re-direct your inquiry to that office.

Very truly yours,

WILLIAM F. LAMB
First Assistant Prosecutor

/rm

Libertarian Party of Central New Jersey

*Open Government Task Force
P.O. Box 5424
Somerset, NJ 08875-5424
Phone: 732-873-1251
Email: paff@pobox.com
September 9, 2005*

Jerome J. Convery, Esq.
2309 Highway 516
Old Bridge, NJ 08857

(via Fax only to 732-679-7270)

RE: Old Bridge Township
Ordinance No. 29-2005

Dear Mr. Convery:

The Libertarian Party of Central New Jersey (LPCNJ) has created an Open Government Task Force of which I am the chairman. The Task Force's goal is to bring all local government agencies in our tri-county district (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.

We are concerned that the captioned, proposed ordinance is partially invalid and unenforceable. At issue is the provision within Section 2 which considers the minutes of the Township Council's closed sessions to be "confidential and privileged" and prevents their public disclosure absent a formal motion and affirmative vote by the Township Council.

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The Council is obligated, under state law, to make the non-exempt portions of its closed session minutes "promptly available" to the public. Since the Council is without

authority to limit or restrict the public's state-established right of access to government records, the proposed ordinance is invalid to the degree that it extends confidentiality of closed session minutes beyond the state's "promptly available" mandate.

We ask that you consider our argument and, if you agree with us, advise the Township Council to not pass this ordinance at its September 12, 2005 meeting.

Thank you for your attention to this matter.

Sincerely,

/s/ John Paff
Task Force Chairman

cc. Rose-Marie Saracino, Township Clerk (for distribution to Council members)