



# New Jersey Libertarian Party

Open Government Advocacy Project

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Hon. Timothy Chell, Mayor and members of the  
Mantua Township Committee  
401 Main St  
Mantua, NJ 08051      (via e-mail to [Smenzies@mantuatownship.com](mailto:Smenzies@mantuatownship.com) )

Dear Mayor Chell and Committee members:

I write both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Open Government Advocacy Project to express my concerns regarding the legality of the Committee's July 20, 2009 closed session. Attached for your ready reference are the minutes from that closed session.

In case Committee members are not familiar with when a given topic can and cannot be discussed in closed session, I'll try to explain it the best that I can. The Sen. Byron M. Baer Open Public Meetings Act requires that the Committee discuss all of its business during a public meeting unless at least one of the nine exceptions contained within the Act permit the discussion to be held in private. And, the Act requires that those exceptions be applied narrowly so that the amount of public discussion is maximized and the amount of private discussion is minimized

The Legislature, when it passed the Act in 1975, recognized that private discussions were sometimes necessary but also knew that secrecy in government fostered corruption and often resulted in decisions that benefited the few rather than the many. In the Act's preamble, the Legislature stated:

[T]he 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 . . .

And, in a 1977 case that interpreted the Act<sup>1</sup>, the New Jersey Supreme Court said:

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<sup>1</sup> [Polillo v. Deane](#), 74 N.J. 562

The policy reasons for opening up government to the public have been expressed on numerous occasions throughout this nation's history. Foremost among them is the goal of fulfilling our cherished ideal of creating a "government of the people." James Madison wrote:

A popular Government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.

DeTocqueville felt that these same ideas were fundamental to the American tradition. In his perceptive commentaries about our system of government, he observed: It is by taking a share in legislation that the American learns to know the law; it is by governing that he becomes educated about the formalities of government. The great work of society is daily performed before his eyes, and so to say, under his hands.

A second reason for conducting government in the "sunshine" is that it prevents corruption. Few persons would disagree with Woodrow Wilson's statement that "corruption thrives in secret places, and avoids public places." Former Chief Justice Warren viewed the Watergate scandal as an unfortunate confirmation of the truth of Woodrow Wilson's observation. He stated:

It would be difficult to name a more efficient ally of corruption than secrecy. Corruption is never flaunted to the world. In government it is invariably practiced through secrecy, secrecy found in every level of government from city halls to the White House and Capitol. If anything is to be learned from our present difficulties, compendiously known as Watergate, it is that we must open our public affairs to public scrutiny on every level of government.

In sum, New Jersey has a strong policy favoring open government and recognizes private meetings of public bodies as a necessary evil that needs to be strictly limited and controlled. Against this backdrop, I'll articulate my concerns with the Committee's July 20, 2009 closed meeting.

While it was certainly permissible for the Committee to have privately discussed the promotion of Adam Hassleman and the replacement of Paul Coleman in closed session, it was **not** permissible for the Committee to have spoken with Chief Sawyer about the pros and cons of a "12 hour shift that will cut back on overtime and comp-time use and requests." Similarly, it was **not** OK for the Committee to have discussed having "two pay days per

month” without the public having an opportunity to observe, nor was it alright for the Committee to have privately discussed “funds to cover food and medical” for the police dog.

Let’s review the exception that allows “personnel matters” to be discussed in private. That exception can be found at N.J.S.A. 10:4-12(b)(8) and states:

[A public body is allowed to go into executive session to discuss any] 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, unless all the individual employees or appointees whose rights could be adversely affected request in writing that such matter or matters be discussed at a public meeting.

As you can see, this exception allows the Committee to privately discuss matters that pertain to **specific** officers or employees. For example, if the Committee wants to discuss disciplining a specific employee, that discussion can be properly<sup>2</sup> held behind closed doors. But, when a discussion is not about specific employees or officers, but rather about a general policy matter, such as the most efficient and cost effective way to assign worker to shifts, the “personnel matters” exception no longer applies. Remember that the law requires the nine exceptions to be interpreted in favor of open meetings and against closed meetings.

I have sued several public bodies<sup>3</sup> for Meetings Act violations. I cannot sit by idly if the Committee elects to continue violating the Act. Accordingly, be advised that I will be monitoring the minutes of future executive sessions. If I find recurrence of the same violations, I will file suit against the Committee for declaratory and injunctive relief without further notice.

Of course, I have no desire to sue and burden Mantua’s taxpayers. I would much rather work with the Committee to improve its compliance with the Act. But, I would like some assurance that the Committee takes these concerns seriously. For instance, would the Committee write to me and let me know that it has reviewed the issues raised in this letter with the Township Solicitor and tell me whether or not the Solicitor agrees or disagrees with my conclusions regarding the July 20, 2009 closed meeting?

Please keep in mind that the Committee is entrusted with a multi-million dollar budget, consisting of taxpayer dollars. The Committee has a legal, as well as a moral,

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<sup>2</sup> Provided, of course, that the employee has received a “Rice” notice and has not demanded that the meeting be held in public.

<sup>3</sup> For example, I have sued Lumberton Township, in Burlington County (See <http://njopengovt.blogspot.com/2009/12/lumberton-township-settles-opma-suit.html> ); Keyport Borough in Monmouth County (<http://njopengovt.blogspot.com/2009/01/court-decides-paff-v-keyport-mixed-bag.html> ) and Howell Township in Monmouth County (<http://njopengovt.blogspot.com/2009/06/favorable-settlement-in-opmaopra-case.html>) to name a few.

responsibility to obey state laws and turn sharp corners when dealing with the public's right to know.

Thank you for your attention to this matter. I hope that the Committee elects to correspond with me.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Paff', with a large, sweeping flourish extending to the left.

John Paff

**July 20, 2009**

On the above date, the Township Committee of the Township of Mantua held its Closed Session Meeting in the Mantua Township Municipal Building, 401 Main Street, Mantua, NJ 08051.

Mayor Timothy W. Chell called for the Closed Session Meeting to order. The time was 8:20 p.m.

Present were Committeeman Robert Zimmerman, Committeewoman Lorraine Beckett, Deputy Mayor Pete Scirrotto, Mayor Chell, Marie DeTitto, Esquire, Township Solicitor, Michael Datz, Township Administrator, Shawn G. Menzies, Township Clerk, and Police Chief Rodney Sawyer. Committeewoman Sharon Lawrence was absent.

Chief Sawyer said after review, he would like to promote Adam Hassleman to replace Paul Coleman within the department. Officer Richard Covolesky will take over Sgt. Coleman's duties as School Resource Officer, which will leave him one man down.

Chief Sawyer said Officer Murphy has a trained Bloodhound which could be useful to the Department and other departments only when Officer Murphy is on duty. Currently, the County Sheriff has one. Funds to cover food and medical will come from the K-9 Fund Raiser held last year. Chief Sawyer said there will be no comp time or overtime for the use of the animal and its handler.

Chief Sawyer reviewed his proposal to go to a 12 hour shift, which will cut back on overtime and comp-time use and requests. There would be four officers on duty during the shifts and not including breakers. He said an addendum would be needed for the current contract agreement. This would include 104 hours of straight time for the officer. He said he would like to implement this as soon as things are worked out with the union and test it just for the remainder of the year and re-visit in January.

Mr. Datz said a review of the Finance Office has found that it is likely to go with Committee's approval for two pay days per month or 24 pay days. It would only pertain to salaried workers, but an issue would be some times a pay days could fall to 16 to 18 days later. Committee agreed.

Mr. Datz said Gayle Tschopp, CFO, has asked for a Shared Service Agreement between the Township of Mantua and Pilesgrove which would require her to work 6 hours a week in the other town. The Committee felt that the Township of Mantua should receive compensation as they feel she should work a full day here. They asked she review the matter and other options.

As no other matters were at hand, the Committee adjourned the Closed Session