

August

26, 2011

Mr. John Paff
VIA E-Mail
paff@pobox.com

Re: Open Public Meetings Act

Dear Mr. Paff:

This office is in receipt of your correspondence dated August 11, 2011. We have reviewed the information contained therein. Initially, it should be noted that the Somerset County Board of Chosen Freeholders share in your concern in this matter. The Board is committed to the spirit and letter of the Open Public Meetings Act, and asks that you accept this letter in reply to your inquiry.

The Somerset County Board of Chosen Freeholders discussed this matter in detail in executive session at its August 23, 2011 meeting. This matter was discussed in executive session as it pertains to "pending or anticipated litigation" under N.J.S.A. 10:4-12(b)(7). At that session, the Board of Freeholders agreed by consensus to take the following steps related thereto:

1. Discussion in closed session shall be limited to items listed on the authorizing resolution and accompanying agenda.
2. Executive minutes shall list the time and place of the closed session.
3. The adopting resolution shall state "as precisely as possible the time when the circumstances under which the discussion conducted in closed session of the public body can be disclosed to the public" as required by N.J.S.A. 10:4-13(b).
4. Closed session will continue to be limited to discussion only. No formal action shall be taken in closed session.
5. Closed session minutes shall be reviewed bi-monthly to determine if any items contained therein can be released to the public.

Because the provisions of N.J.S.A. 10:4-6, et seq. are statutory provisions by which every like governing body in New Jersey is bound, it is the Board's position that there is no need to take further action such as the implementation of a written policy or the passing of a formal resolution.

On behalf of the Board of Chosen Freeholders, thank you for your attention and concern in this matter. Your input and suggestions were a valuable resource in the resolution of this matter. If you have any further comments concerning this issue, please do not hesitate in contacting this office.

William T. Cooper, III
County Counsel

Subject: Potential Lawsuit against Board of Freeholders

From: John Paff <paff@pobox.com>

Date: 8/11/2011 10:07 PM

To: Kathye Quick <Quick@co.somerset.nj.us>

Kathye:

Attached is a draft of a lawsuit that I intend to file against the Board of Chosen Freeholders. Would you please a) acknowledge receipt of this e-mail and attachment and b) ask the Board to discuss the matter during executive session at its August 23, 2011 meeting?

Please let the Board know that if I don't hear anything from the Freeholders or their attorney by August 26th, I will file the attached lawsuit, or something similar to it, without further notice.

Sincerely,

John

—Attachments:—————

b108__Draft lawsuit.pdf

655 KB

John Paff
P.O. Box 5424
Somerset, NJ 08875
Telephone: 732-873-1251
E-mail: paff@pobox.com
Plaintiff, pro se

JOHN PAFF, Plaintiff, v. SOMERSET COUNTY BOARD OF CHOSEN FREEHOLDERS Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: SOMERSET DOCKET NO. _____ CIVIL ACTION COMPLAINT
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Plaintiff John Paff, complaining of the Defendant, alleges as follows:

THE PARTIES

1. Plaintiff John Paff resides in Franklin Township in Somerset County and maintains a mailing address of P.O. Box 5424, Somerset, New Jersey 08875. He serves as the Chairman of the New Jersey Libertarian Party's Open Government Advocacy Project, which seeks to increase transparency and accountability in government agencies.

2. Defendant Somerset County Board of Chosen Freeholders ("the Board") is a "public body" as that term is defined by N.J.S.A. 10:4-8(a).

JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction of this action pursuant to N.J.S.A 10:4-16.

4. Venue is proper in this court pursuant to *R. 4:3-2(a)(2)* because most of the relevant events occurred in this County and the Board is a public body located within this County.

FACTUAL ALLEGATIONS

5. On August 11, 2011, in response to Plaintiff's Open Public Records Act request, the Board disclosed the resolutions, minutes and redaction indexes for its June 28, 2011, July 12, 2011 and July 26, 2011 nonpublic (executive or closed) sessions. Those records are attached as Exhibit pages 1 through 11.

6. On August 11, 2011, Plaintiff e-mailed the Board, in care of Deputy Clerk Kathryn Quick, a copy of a draft of this lawsuit with a request that the Board consider it during its August 23, 2011 meeting and advise Plaintiff, within a few days thereafter, of whether or not it a) agreed with the deficiencies noted in this lawsuit and b) agreed to develop a written policy that would prevent a recurrence of those deficiencies. A copy of Plaintiff's e-mail to Deputy Clerk Quick is attached as Exhibit page 12.

7. [Description of the Board's failure or refusal to work with modify its behavior.]

FIRST COUNT **(Open Public Meetings Act-Improper Topics Discussed)**

8. Plaintiff repeats and incorporates by reference each and every allegation contained in paragraphs 1-7 of the Plaintiff's complaint as though fully set forth at length herein.

9. At its June 28, 2011, July 12, 2011 and July 26, 2011 nonpublic sessions, the Board discussed matters that were a) not listed within the corresponding N.J.S.A. 10:4-13 resolutions and b) are not permitted to be discussed without the public in attendance. By way of example, on June 28, 2011, the Board discussed a "smoke free policy" even though that topic was not listed in the June 28, 2011 N.J.S.A. 10:4-13 resolution and is not authorized by N.J.S.A. 10:4-12(b) to be discussed without the public in attendance.

SECOND COUNT
(Open Public Meetings Act-Minutes Insufficient)

10. Plaintiff repeats and incorporates by reference each and every allegation contained in paragraphs 1-9 of the Plaintiff's complaint as though fully set forth at length herein.

11. Despite the express mandate in N.J.S.A. 10:4-14 that meeting minutes contain the "time and place" of the meeting, the June 28, 2011, July 12, 2011 and July 26, 2011 nonpublic meeting minutes fail to disclose that information.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against the Defendants:

A. Declaring that the Defendant Board violated the Senator Byron M. Baer Open Public Meetings Act (OPMA) by discussing matters within nonpublic session which were not listed within the session's authorizing resolution.

B. Declaring that the Defendant Board violated the Senator Byron M. Baer Open Public Meetings Act (OPMA) by discussing matters within nonpublic session which were are not permitted by N.J.S.A. 10:4-12(b) to be discussed in nonpublic session.

C. Declaring that the Defendant Board violated the Senator Byron M. Baer Open Public Meetings Act (OPMA) by failing to disclose the times and locations of its nonpublic session in the minutes of those nonpublic sessions.

D. Permanently enjoining the Board from committing the violations declared in ¶¶ A, B and C above.

E. Awarding Plaintiff his costs.

F. For such other or further relief as this Court deems just and equitable.

CERTIFICATION PURSUANT TO R. 4:5-1

I certify that the dispute about which I am suing is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action of arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

CERTIFICATION PURSUANT TO R. 1:38-7(b)

I certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future.

DATED: August ____, 2011

John Paff

**SOMERSET COUNTY BOARD OF CHOSEN FREEHOLDERS
AGENDA SESSION OF JUNE 28, 2011 – 4:30PM
FOR REGULAR MEETING ON JULY 12, 2011 -7:00PM**

There Being No Further Business, After Motion By Freeholder Ciattarelli Seconded By Freeholder Walsh, the Board Retired To Executive Session Under The Provisions of the Open Public Meetings Act, Chapter 231, Pl. 1975. The Motion was adopted by voice vote.

110628EX

1. This Board will go into Closed Session at this meeting for the purpose of discussing matters within the provisions of C10:4-12

- | | | |
|--------------|------|--|
| ___ | 7(4) | Collective Bargaining |
| ___ | 7(5) | Purchases, Lease Acquisition of Land |
| <u> X </u> | 7(7) | Potential/Pending Litigation, Contracts, Negotiations
Skillman
Immigration Issue |
| <u> X </u> | 7(8) | Personnel Matters
Vacancy listing |

Under the provisions of the above referenced law, the public may be excluded from attendance at the portion

Somerset County Board of Chosen Freeholders
Executive Session
June 28, 2011

Present

Absent

Jack Ciattarelli
Patrick Scaglione
Patricia Walsh
Robert Zaborowski
Peter Palmer
Michael Amorosa
William Cooper
Chris Corsini

None

SKILLMAN VILLAGE

William Cooper gave an update on the Skillman Village property acquisition. [REDACTED]

INS 287(g) and LED 2007-3

Mr. Cooper reported that a reply letter had been drafted to Thomas Coulter and had been circulated amongst the Board for approval. Mr. Cooper asked the Board to approve the letter as amended, which the Board did.

SMOKE-FREE POLICY

Mike Amorosa updated to Board on the status of the policy. He noted that the policy had been completed and asked the Board what step they would want to take next. The Board discussed the best plan to implement the policy. The Board agreed on putting off the decision for two weeks to discuss the matter with Bev Hacker.

SENIOR CITIZEN'S ASSISTANCE PROGRAM

Mike Amorosa presented this contract item. [REDACTED]

STATE LEGISLATION -- PENSIONS & HEALTH

The Board was informed that the most recent revisions to pensions and benefits law required various state agencies to provide guidance on the law's provisions.

LONG-TERM CARE INSURANCE

VACANCY LISTING.

The Board approved the Vacancy List

**REDACTION INDEX
FOR
SOMERSET COUNTY BOARD OF CHOSEN FREEHOLDERS
EXECUTIVE SESSION MEETING MINUTES
DATED JUNE 28, 2011**

SKILLMAN VILLAGE

Language redacted constitutes attorney-client privileged communication concerning an ongoing contractual matter.

SENIOR CITIZENS ASSISTANCE PROGRAM

Language redacted concerns an ongoing contractual matter.

LONG TERM CARE INSURANCE

Language redacted because of impact disclosure may have upon ongoing collective bargaining agreement negotiations.

DRAFT

**SOMERSET COUNTY BOARD OF CHOSEN FREEHOLDERS
AGENDA SESSION OF JULY 12, 2011
FOR REGULAR MEETING ON JULY 26, 2011**

There Being No Further Business, After Motion By Freeholder Walsh Seconded By Freeholder Scaglione, the Board Retired To Executive Session Under The Provisions of the Open Public Meetings Act, Chapter 231, Pl. 1975. The Motion was adopted by voice vote with Mr. Ciattarelli absent.

110712EX

RESOLUTION CLOSING PORTION OF MEETING

BE IT RESOLVED by the Board of Chosen Freeholders of the County of Somerset, that under the provision of the Open Public Meetings Act, Chapter 231, PL 1975:

1. This Board will go into Closed Session at this meeting for the purposes of discussing matters within the provisions of C10:4-12 .

_____ 7(4) Collective Bargaining

_____ 7(5) Purchase, Lease, Acquisition of Land

 x 7(7) Potential/Pending Litigation, Contract Negotiations
Natirar Shed
Chargeback Claim
Skillman
PESS

 x 7(8) Personnel Matters
Vacancy Listing
Personnel Policy Change

2. Under the provisions of the above referenced law, the public may be excluded from Attendance at the portion of the meeting relating to aforementioned matters.

3. Items discussed will be disclosed as soon as possible.

Somerset County Board of Chosen Freeholders
Executive Session
July 12, 2011

Present

Jack Ciattarelli
Patrick Scaglione
Patricia Walsh
Robert Zaborowski
Peter Palmer
Michael Amorosa
William Cooper
Chris Corsini

Absent

None

Freeholder Ciattarelli arrived for the smoke-free policy discussion.

NATIRAR VIEW SHED

Freeholder Palmer has requested an opportunity to view the site line at Natirar. Mike Amorosa indicated that he will arrange a visit and Freeholder Palmer will report back.

CHARGEBACK ASSISTANCE CLAIM

A constituent recently requested that the Freeholder Board examine the issue of chargebacks for students who reside in Somerset County but attend community colleges in other counties, specifically, Union County for this constituent. [REDACTED]

[REDACTED] The Board decided to forward to the constituent a letter from Brian Newman explaining the issue. [REDACTED]

SKILLMAN VILLAGE

Bill Cooper provided the Board an update on this land acquisition. Montgomery Township is waiting for permits back from the State in order to commence demolition on buildings remaining on the property. No buildings have been demolished yet in anticipation of these permits. [REDACTED]

PESS

Bill Cooper addressed an inquiry from a father of a young man recently treated at PESS. [REDACTED]

VACANCY LIST

The Board approved the vacancy list.

SMOKING POLICY

Bev Hacker updated the Board on the status of the County's smoking policy. Bev indicated that the policy was ready for implementation. Bev indicated that the Board had decided to go with a plan that banned smoking: (1) in all interior spaces of all property owned or leased by the County, pursuant to the New Jersey Smoke Free Air Act of 2006, including garages and storage areas; (2) on County owned property that is within 50 feet of any entrance or exit primarily accessed by the visiting public; (3) on County owned property that is within 50 feet of any entrance or exit accessed by the public, and where smoking would result in smoke traveling through doorways, windows, air ducts or openings; (4) within any County owned, leased or rented vehicle, including heavy equipment; (5) on playgrounds, baseball fields, softball fields, multi-purpose fields, tennis courts, Warrenbrook Pool and the roller hockey rink, including common areas to these facilities such as viewing areas, bleachers and restrooms; (6) at the Environmental Education Center, Lord Stirling Stable, and the Leonard J. Buck Garden, in order to protect animals, wildlife and other cultural and historic resources; (7) smoking shall also be discouraged within 50 feet of children at all properties. Bev also indicated that certain properties would be excluded from the policy.

It was noted that the cost to implement the policy would be approximately \$52,000.00, which would include the cost of signage, receptacles and the smoking cessation program. The policy would also include civil penalties under the Smoke Free Air Act. The Board discussed the policy's costs and benefits. The Board also discussed the method of implementation for the policy. The Board agreed to take action on the policy at the next meeting. Bev indicated that, once approved, the policy would take three months to implement.

Bob Zaborowski requested a further breakdown on the cost.

BASILONE PARADE

Mike Amorosa reminded the Board of the annual donation of \$1,500.00 to the Parade Committee to help defer the cost of the annual event.

**REDACTION INDEX
FOR
SOMERSET COUNTY BOARD OF CHOSEN FREEHOLDERS
EXECUTIVE SESSION MEETING MINUTES
DATED JULY 12, 2011**

CHARGEBACK ASSISTANCE CLAIM

Language redacted constitutes attorney-client privileged communication.

SKILLMAN VILLAGE

Language redacted constitutes attorney-client privileged communication concerning an ongoing contractual matter.

PESS

Language redacted concerns attorney-client privileged communication pertaining to complaint received in connection with a minor.

DRAFT

**SOMERSET COUNTY BOARD OF CHOSEN FREEHOLDERS
WORK SESSION AGENDA OF JULY 26, 2011
FOR REGULAR MEETING ON AUGUST 9, 2011**

There Being No Further Business, After Motion By Freeholder Palmer Seconded By Freeholder Scaglione, the Board Retired To Executive Session Under The Provisions of the Open Public Meetings Act, Chapter 231, PL 1975.

110726EX

RESOLUTION CLOSING PORTION OF MEETING

BE IT RESOLVED by the Board of Chosen Freeholders of the County of Somerset, that under the provision of the Open Public Meetings Act, Chapter 231, PL 1975:

- 1. This Board will go into Closed Session at this meeting for the purposes of discussing matters within the provisions of C10:4-12**

_____ **7(4) Collective Bargaining**

_____ **7(5) Purchase, Lease, Acquisition of Land**

 x **7(7) Potential/Pending Litigation, Contract Negotiations**
Skillman
Natitar
ESC Bond request
YMCA Bond Request

 x **7(8) Personnel Matters**
Vacancy Listing
Hay

- 2. Under the provisions of the above referenced law, the public may be excluded from Attendance at the portion of the meeting relating to aforementioned matters.**

Items discussed will be disclosed as soon as possible.

Somerset County Board of Chosen Freeholders
Executive Session
July 26, 2011

Present

Absent

Jack Ciattarelli
Patrick Scaglione
Patricia Walsh
Robert Zaborowski
Peter Palmer
Michael Amorosa
William Cooper
Chris Corsini

None

YMCA SUPPLEMENTAL FUNDING REQUEST

Mike Amorosa indicated that a request was pending from the Somerset County YMCA for funding in the amount of \$500,000. The Board discussed the feasibility of making such an appropriation and decided not to make any contribution this year. A letter will be drafted and sent to the YMCA indicating same.

EDUCATIONAL SERVICES COMMISSION BOND REQUEST

Mike Amorosa informed the Board that the ESC is seeking authority to act as a conduit agency for the reconstruction of buildings for the expansion project. The amount sought by the ESC is \$8 million.

SKILLMAN VILLAGE

Bill Cooper updated the Board of the Skillman Village acquisition. [REDACTED]

NATIRAR FARMLAND ASSESSMENT

Mike Amorosa noted that there are portions of the Natirar property where produce is grown that qualify for the farmland tax assessment. Approval is sought by the Board to apply for such an assessment. The Board discussed the issue and approved the application, which Amorosa will execute.

JOB RECLASSIFICATION AND PROMOTION

Though this item was listed on the agenda, it was not ready for discussion.

BOARD OF SOCIAL SERVICES BUILDING

Bill Cooper updated the Board on these acquisitions [REDACTED]
[REDACTED]

VACANCY LIST

The Board approved the vacancy list.

DRAFT

**REDACTION INDEX
FOR
SOMERSET COUNTY BOARD OF CHOSEN FREEHOLDERS
EXECUTIVE SESSION MEETING MINUTES
DATED JULY 26, 2011**

EDUCATIONAL SERVICES COMMISSION BOND REQUEST

Language redacted concerns attorney-client privileged communication pertaining to a potential contract matter.

SKILLMAN VILLAGE

Language redacted constitutes attorney-client privileged communication concerning an ongoing contractual matter.

BOARD OF SOCIAL SERVICES BUILDING

Language redacted constitutes attorney-client privileged communication concerning an ongoing contractual matter.

DRAFT

Exhibit page 12 pending

DRAFT