

GLOUCESTER FINANCE

Batch # 402

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SUPERIOR COURT OF NJ
GLO. COUNTY CLERK'S OFFICE

John A. Alice
28 Cooper Street
Woodbury, N.J. 08096
Phone: (856) 845-7222
Attorneys for Plaintiff, James Mello

JAMES MELLO

Plaintiff

vs.

**GINNY MURPHY, MEMBER
WASHINGTON TOWNSHIP
BOARD OF EDUCATION,**

AND

**STEVE ALTAMURO, PRESIDENT
WASHINGTON TOWNSHIP
BOARD OF EDUCATION,**

AND

**WASHINGTON TOWNSHIP
BOARD OF EDUCATION**

Defendants

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
GLOUCESTER COUNTY**

DOCKET NO: GLO-L-1403-12

Civil Action

**ORDER TO SHOW CAUSE SEEKING
INJUNCTIVE AND OTHER RELIEF**

THIS MATTER being brought before the Court by John A. Alice, Esquire, attorney for the plaintiff, James Mello, seeking relief by way of temporary restraints pursuant to R. 4:52, based upon the facts set forth in the verified complaint in lieu of prerogative writ filed herewith; and it appearing that immediate and irreparable damage will probably result before notice can be given and a hearing held, and for good cause shown.

It is 25th day of September, 2012, ORDERED that the defendants, Ginny Murphy, member of the Washington Board of Education, Steve Altamuro, President of the Washington Township Board of Education, and the Washington Township

Board of Education, and all other persons in active concert or participation with them, appear and show cause before Judge Curio of the Gloucester County Superior Court located at 70 Hunter Street, Woodbury, New Jersey on 29th day of November, 2012, at ~~9:00~~³⁰ A.M., or as soon thereafter as counsel may be heard, as to why the relief sought in the proposed order should not be entered.

- A. The defendants are enjoined and restrained from ~~any discussions~~ regarding selection of professionals and/or conflicts of interest during closed sessions.
- B. Defendants shall ~~conduct all~~ future meetings in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-1, et seq.

JMC

[Signature]

J.S.C.

And it is further ORDERED that:

1. The defendants may move to dissolve or modify the temporary restraints herein contained on two (2) days notice to the plaintiff's attorney, John A. Alice, Esquire.

2. A copy of this Order to Show Cause, Verified Complaint, legal memorandum and any supporting affidavits or certifications submitted in support of this application be served upon the defendants or by a person authorized by rule of law to accept service for the defendants within 7 days of the date hereof, in accordance with R. 4:43-3 and R. 4:4-4, this being original process.

3. The plaintiffs must file with the court his/her/its proof of service of the pleadings on the defendants no later than three (3) days before the return date.

4. Defendants shall file and serve a written response to this order to show cause and the request for entry of injunctive relief and proof of service ~~by~~ as provided by the rules

~~_____~~, 2012. The original documents must be filed with the Clerk of the Superior Court in the county listed above. A list of these offices is provided. You must send a copy of your opposition papers directly to Judge Curio whose address is Gloucester County Superior Court, 70 Hunter Street, Woodbury, NJ 08096. You must also send a copy of your opposition papers to the plaintiffs' attorney whose name and address appears above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file your opposition ^{no fee for opposition} ~~and pay the required fee of \$135.00~~ and serve your opposition on your adversary, if you want the court to hear your opposition to the injunctive relief the plaintiffs are seeking.

5. The plaintiffs must file and serve any written reply to the defendants' order to show cause opposition by ^{as provided by the rules} ~~_____~~, 2012. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge Curio.

6. If the defendants do not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the plaintiffs file a proof of service and a proposed form of order at least three days prior to the return date.

7. If the plaintiffs have not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date.

8. Defendants take notice that the plaintiffs have filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written

answer to the complaint and proof of service within 35 days from the date of service of this order to show cause; not counting the day you received it.

These documents must be filed with the Clerk of the Superior Court in the county listed above. A list of these offices is provided. Include a \$135.00 filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your Answer to the plaintiffs' attorney whose name and address appear above, or to the plaintiffs, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your Answer (with the fee) or judgment may be entered against you by default. Please note: Opposition to the order to show cause is not an Answer and you must file both. Please note further: if you do not file and serve an Answer within 35 days of this Order, the Court may enter a default against you for the relief demanded by plaintiffs.

9. If you cannot afford an attorney, you must call the Legal Services office in the county in which you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

10. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than 3 days before the return date.



J.S.C.

John A. Alice
28 Cooper Street
Woodbury, N.J. 08096
Phone: (856) 845-7222
Attorneys for Plaintiff, James Mello

JAMES MELLO

Plaintiff

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**GINNY MURPHY, MEMBER
WASHINGTON TOWNSHIP
BOARD OF EDUCATION,**

AND

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AND

**WASHINGTON TOWNSHIP
BOARD OF EDUCATION**

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
GLOUCESTER COUNTY

DOCKET NO: *GL01-1403-12*

Civil Action

**VERIFIED COMPLAINT IN LIEU OF
PREROGATIVE WRIT**

The plaintiff, James Mello, by way of verified complaint in lieu of prerogative writ, against defendants, Ginny Murphy, member of the Washington Township Board of Education, Steve Altamuro, President of the Washington Township Board of Education, and the Washington Township Board of Education states as follows:

1. Plaintiff James Mello is a resident of Washington Township, Gloucester County, New Jersey whose address is 6 Teal Court, Sewell, Washington Township, New Jersey 08080.

2. Defendant, Ginny Murphy, is a member of the Washington Township Board of Education with a primary place of business located at 206 East Holly Avenue, Sewell, Gloucester County, New Jersey 08080.

3. Defendant, Steve Altamuro, is a member of the Washington Township Board of Education with a primary place of business located at 206 East Holly Avenue, Sewell, Gloucester County, New Jersey 08080.

4. Defendant, Washington Township Board of Education, is a governmental entity with a principal place of business located at 206 East Holly Avenue, Sewell, Gloucester County, New Jersey 08080.

5. The Washington Township Board of Education and each of its members is responsible for the oversight of Washington Township schools with a duty to uphold and enforce all laws, rules, and regulations of the State Board of Education and are responsible for policy making, planning, and appraisal. The Washington Board of Education has a principal place of business located at 206 East Holly Avenue, Sewell, Gloucester County, New Jersey 08080.

6. Pursuant to the Open Public Meetings Act (“OPMA”), N.J.S.A. 10:4-1 et seq., all meetings of public bodies are mandated to be open to the public with limited exemptions as set forth in the statute.

7. Discussions of the conflicts of interest and selection of Board professionals is not exempt from the OPMA.

8. On or about March 19, 2012, the Washington Township Board of Education went into a closed session to the exclusion of the public to address a “...Personnel – Personnel Agenda; Contractual – Long Term Substitute Rates; Legal – Senior Privilege Hearing (K.G.), Approval to Affirm the Superintendent’s Decision on the HIB Incidents Reported in the

February 28, 2012 HIB Report to the Board, Board Matter” matter pursuant to an unnumbered Resolution. (See unnumbered Resolution of March 19, 2012 attached hereto as Exhibit “A”).

9. On or about March 19, 2012, the Washington Township Board of Education met in closed session to the exclusion of the public. The closed session, in pertinent part, was memorialized as follows:

Mr. Comegno stated that on Friday Mr. Goldschmidt and Miss Meehan arranged a conference call with Mr. Altamuro and him to discuss the delivery of mail that some board members received. This was anonymous mail; and in his opinion, it does not exist and does not need to be addressed but needs to be brought to the Board’s attention. Mr. Comegno advised the Board that this is an issue that Mrs. Murphy brought to his attention in January asking if there was an ethical issue voting for this firm, where individuals had contributed to her campaign. There is a case on point that addresses this issue, and there is no ethical violation for voting for this vendor if the individuals making the contribution do not have 10 percent interest in the company, which is the case here. Mr. Comegno asked if anyone had any comments or concerns regarding this matter as this is the place for discussion. Mrs. Abbott disagreed about the anonymity as it is a public record that she received. She believes that Mrs. Murphy had the obligation to tell the Board or at least the Business Committee. Mr. Comegno responded that there is no policy, school ethics act, or accountability regulations requiring this. Mr. Snyder stated that he thinks Mrs. Murphy takes her Board member obligations seriously

whenever we deal with a vendor, but he thinks should have been disclosed. He felt deceived. It doesn't build a family relationship. We need to look at the policy regarding disclosing this type of subject.

Executive Session 3/19/12 Page 4

(See closed Minutes of March 19, 2012 attached hereto as Exhibit "B" Please note the pertinent part as appears above was redacted).

10. The aforementioned records of the closed sessions of the Washington Township Board of Education were obtained through the Washington Township Open Public Records Act (OPRA) in redacted form. The entire closed session Minutes of March 19, 2012 are attached as received including redacted information.

11. The plaintiff now provides to the court at Paragraph 9 the un-redacted discussion that the Defendants participated in and is now complained of.

12. The defendants have an obligation to uphold and enforce all laws, rules, and regulations of the State Board of Education and are responsible for policy making, planning, and appraisal.

13. The defendants have a further obligation to honor and follow the Open Public Meeting Act (OPMA) and have failed to do so as hereinbefore indicated.

WHEREFORE, Plaintiff demands judgment against Defendants, Ginny Murphy, Washington Township Board of Education member, Steve Altamuro, President of the Washington Township Board of Education, and the Washington Township Board of Education, seeking the following:

- A. An injunction prohibiting Defendants from any future violations of the OPMA by discussing conflict of interest matters and the selection of Board professionals in closed sessions.
- B. Defendants to produce, or for in camera review, the following:
 - a. All 2011 through 2012 Washington Township Board of Education closed session minutes in unredacted form;
 - b. All 2011 through 2012 Washington Township Board of Education transcripts of closed sessions;
 - c. All 2011 through 2012 Washington Township Board of Education audio tape recordings and/or video recordings of closed sessions;
 - d. And/or any and all other record(s) of closed session discussions
- C. Attorney fees and costs of suit.
- D. All other relief the court deems equitable.

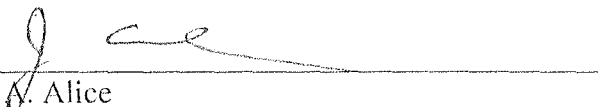
DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:5-1(c), John A. Alice is designated as trial counsel for the plaintiff, James Mello, in the above matter.

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

I certify in accordance with R. 4:5-1 that there are no other proceedings either pending or contemplated with respect to the matter in controversy in this action and no other parties who should be joined in this action.

Dated: September 19, 2012



John A. Alice
Attorney for Plaintiff, James Mello

John A. Alice
28 Cooper Street
Woodbury, N.J. 08096
Phone: (856) 845-7222
Attorneys for Plaintiff, James Mello

JAMES MELLO

Plaintiff

vs.

**GINNY MURPHY, MEMBER
WASHINGTON TOWNSHIP
BOARD OF EDUCATION,**

AND

**STEVE ALTAMURO, PRESIDENT
WASHINGTON TOWNSHIP
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AND

**WASHINGTON TOWNSHIP
BOARD OF EDUCATION**

Defendants

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
GLOUCESTER COUNTY**

DOCKET NO:

Civil Action

**VERIFIED COMPLAINT IN LIEU OF
PREROGATIVE WRIT**

I, James Mello, upon my oath and being sworn under law do hereby state and declare:

1. I are the named plaintiff in the complaint captioned James Mello vs. Ginny Murphy, et al.

2. I have read and reviewed the said complaint and do hereby verify that the statements contained therein are true and correct.

3. I understand that if any of the foregoing statements made by us are willfully false, we are subject to punishment.

Dated: 9/14/12


James Mello

SUNSHINE LAW RESOLUTION

The New Jersey Open Public Meetings Law was enacted to ensure the rights of the public to have advance notice and to attend the meetings of public bodies at which any business affecting their interests is discussed or acted upon. In accordance with the provisions of the Act, public notice of the meeting has been given by the Board Secretary in the following manner: Posting written notice on the official bulletin board at the Central Administration Building; mailing written notice to the Gloucester County Times and Courier Post; and filing written notice with the Clerk of the Township of Washington on March 13, 2012.

- ROLL CALL
- MOTION FOR EXECUTIVE

EXECUTIVE SESSION RESOLUTION

Resolved that pursuant to Section 8 of the Public Meetings Act, the public shall be excluded from that portion of the meeting involving the discussion of:

Personnel: Personnel Agenda

Contractual: Long-Term Substitute Rates

Legal: Senior Privilege Hearing (K.G.), Approval to Affirm the Superintendent's Decision on the HIB Incidents Reported in the February 28, 2012 HIB Report to the Board, Board Matter

FURTHER RESOLVED that discussion of such subject matter in Executive Session can be disclosed to the public if any action is taken by the Board, either at the resumption of the public session, at the conclusion of the Executive Session, or at a public session at some later date.



WASHINGTON TOWNSHIP BOARD OF EDUCATION

BOARD
MEETING
RE:

March 19, 2012
Executive Session

PUBLIC
NOTICE

The New Jersey Open Public Meeting Law was enacted to ensure the rights of the public to have advance notice of and to attend the meetings of public bodies at which any business affecting their interests is discussed or acted upon. In accordance with the provisions of the Act, public notice of the meeting has been given by the Board Secretary in the following manner: Posting written notice on the official bulletin board at the Central Administration Building; mailing written notice to the Courier Post and the Gloucester County Times and filing written notice with the Clerk of the Township of Washington on March 13, 2012.

ROLL CALL

The meeting was called to order by Board President, Mr. Altamuro, at 6:35 p.m.

Board members present were Mrs. Abbott, Mr. Aronovitch, Mr. Marino, Mr. Murphy, Mrs. Murphy, Mr. Snyder, and Mr. Altamuro.

Mr. Nawoyski arrived at 6:40 p.m.

Also present were Miss Alestra, Mr. Comegno, Mr. Goldschmidt, Miss Meehan, Mr. Rolen, and Mr. Vandenberg.

Present for Open Session were Miss Giel, Mr. Jacques, Mrs. Jorgensen, Mrs. Marciano, and Mr. McGee.

EXECUTIVE
SESSION

Moved by Mr. Snyder, seconded by Mrs. Murphy, to go into Executive Session at 6:36 p.m. with adoption of the following resolution:

RESOLVED that pursuant to Section 8 of the Open Public Meetings Act, the public shall be excluded from that portion of the meeting involving discussion of: Personnel - Personnel Agenda;



Contractual - Long-Term Substitute Rates; Legal - Senior Privilege Hearing (K.G.), Approval to Affirm the Superintendent's Decision on the HIB Incidents Reported in the February 28, 2012 HIB Report to the Board, Board Matter.

FURTHER RESOLVED that discussion of such subject matter in Executive Session can be disclosed to the public, if appropriate, at such time as formal action, if any, is taken by the Board, either at conclusion of the Executive Session, or at a public session at some later date.

MOTION CARRIED.

SENIOR PRIVILEGE HEARING (K.G.)

Mr. Goldschmidt explained that a hearing on senior privilege for a WTHS senior [REDACTED], resulted after it was determined that she had moved with her grandmother to Pine Hill earlier in the year.

Ms. [REDACTED] (mother) entered the room and gave her name and address ([REDACTED]).

The Board asked her how long [REDACTED] has gone to school in Washington Township.

Ms. [REDACTED] indicated all her life.

The Board asked her if she was going on the senior trip.

Ms. [REDACTED] replied that she was going.

Mr. Altamuro took a straw vote if the Board was in agreement to allow [REDACTED] to complete her senior year at Washington Township with no tuition charge.

The Board was in agreement.

Ms. [REDACTED] left the room.

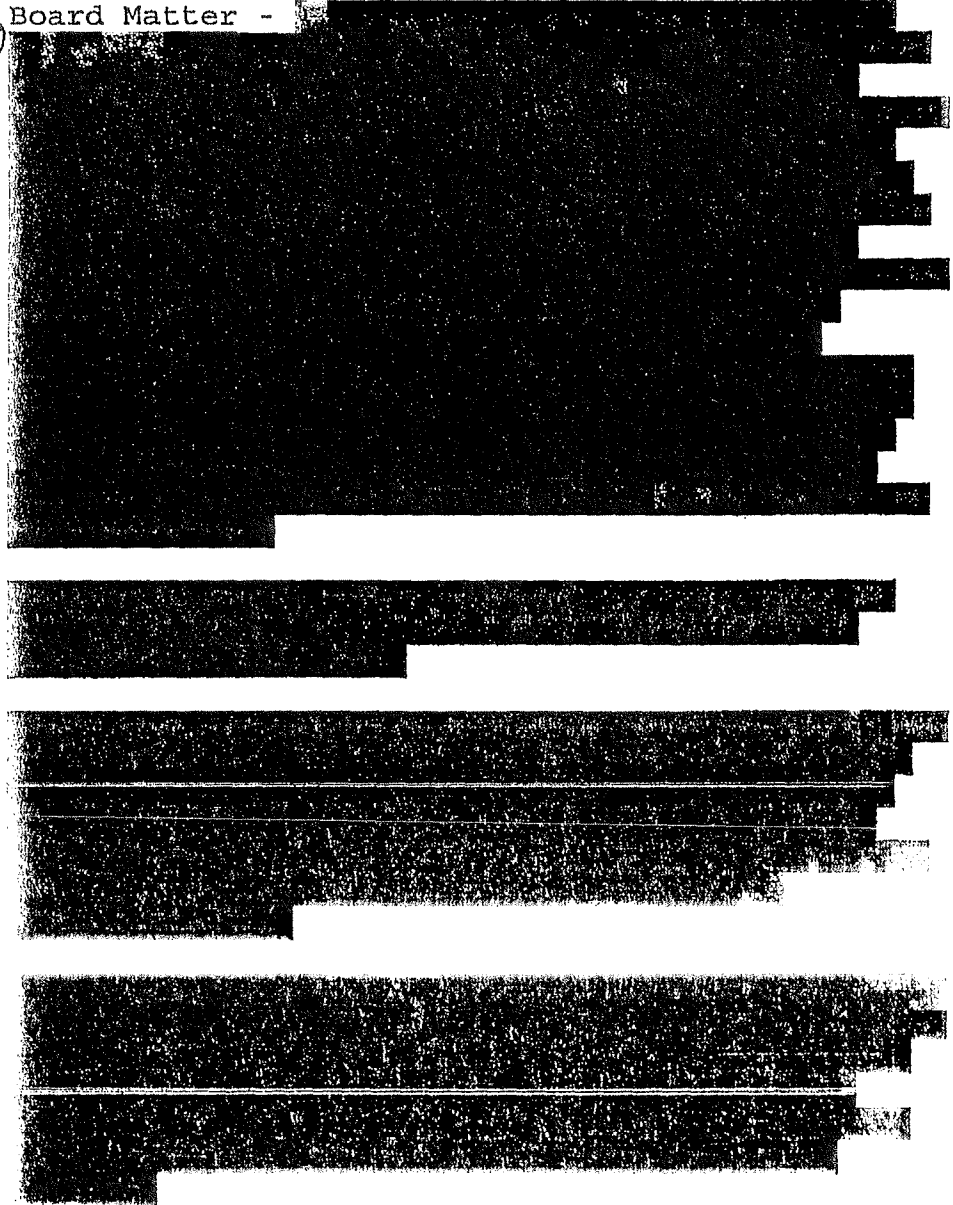
Confidential Student Information Covered in detail.

RESOURCES

Mr. Altamuro indicated that the current rate for long-term substitutes is \$175 per day. We are still the highest in the area. In order to get the savings, we are trying to reduce that amount. He thinks the average in our area is \$125. He doesn't have a problem being higher than that, but he doesn't want to be \$50 higher. There are a number of people currently going on maternity leave.

LEGAL

Board Matter -



*Items not noted
on public -
cannot understand.*

The board discussed the need for changing our policy on this issue.

LEGAL

HIB Report - Mr. Goldschmidt asked the Board if they were in agreement to affirm the HIB results after reading the reports.

*Confidential
Student Information*

The Board felt there was not enough information on HIB Report at the high school.

Mr. Goldschmidt indicated he would hold that specific item until Mr. Bollendorf could answer the Board's questions.

HUMAN
RESOURCES

Mr. Goldschmidt reviewed the personnel agenda with the Board.

The Board continued discussion on the long-term substitute rate.

Mr. Altamuro took a straw vote on paying \$225 as the maximum and give Mr. Goldschmidt flexibility with the pay according to the need for the position.

The Board was in agreement except for Mr. Altamuro.

OPEN
SESSION

Moved by Mr. Aronovitch, seconded by Mr. Nawoyski, to go into Open Session at 8:04 p.m.

MOTION CARRIED.

EXECUTIVE
SESSION

Moved by Mr. Aronovitch, seconded by Mr. Snyder, to go into Executive Session at 9:15 p.m. with adoption of the following resolution:

RESOLVED that pursuant to Section 8 of the Open Public Meetings Act, the public shall be excluded from that portion of the meeting involving discussion of: Personnel - Personnel Agenda; Contractual - Long-Term Substitute Rates; Legal - Senior Privilege Hearing (K.G.), Approval to

Affirm the Superintendent's Decision on the HIB Incidents Reported in the February 28, 2012 HIB Report to the Board, Board Matter.

FURTHER RESOLVED that discussion of such subject matter in Executive Session can be disclosed to the public, if appropriate, at such time as formal action, if any, is taken by the Board, either at conclusion of the Executive Session, or at a public session at some later date.

MOTION CARRIED.

The Board took a break until 9:30 p.m.

Mr. Bollendorf explained the HIB incident on HIB Report

[REDACTED]

It has been over a month now, and it had a good outcome.

The Board discussed it with Mr. Bollendorf and were satisfied with the information they were given.

Mr. Bollendorf left the room.

HUMAN RESOURCES

Mr. Altamuro

[REDACTED]

Mr. Goldschmidt opened the subject of long-term substitutes for discussion again. Mr. Goldschmidt would like to have a flexible rate due to competition for some positions and shortages in specialized subject areas.

*Confidential
Student information
Cannot predict*

*No action
taken in
public,
cannot
predict.*

After some discussion, the Board decided to get a straw poll on \$150 to \$225 for long term substitutes. Mr. Goldschmidt would use his judgment in hiring at a higher rate only if it is needed to fill the position.

The Board was in favor of \$150-\$225, except for Mr. Altamuro who voted no.

OPEN
SESSION

Moved by Mr. Marino, seconded by Mr. Murphy, to go into Open Session at 10:00 p.m.

MOTION CARRIED.

MEETING
ADJOURNED

Moved by Mr. Snyder, seconded by Mr. Marino, to adjourn at 10:13 p.m.

MOTION CARRIED.

Respectfully submitted,



Margaret F. Meehan, CPA
School Business Administrator/
Board Secretary

John A. Alice
28 Cooper Street
Woodbury, N.J. 08096
Phone: (856) 845-7222
Attorneys for Plaintiff, James Mello

SEP 11 2012

JAMES MELLO,

Plaintiff

vs.

GINNY MURPHY, MEMBER
WASHINGTON TOWNSHIP
BOARD OF EDUCATION,

AND

STEVE ALTAMURO, PRESIDENT
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BOARD OF EDUCATION,

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BOARD OF EDUCATION

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
GLOUCESTER COUNTY

DOCKET NO: G-LO-L-1403-12

Civil Action

**BRIEF INSUPPORT OF THE ORDER TO
SHOW CAUSE SEEKING INJUNCTIVE
AND OTHER RELIEF**

INTRODUCTION

The Defendants, Ginny Murphy, member of the Washington Township Board of Education, Steve Altamuro, President of the Washington Township Board of Education and the Washington Township Board of Education, have engaged in closed meeting to the exclusion of the public in which discussions, deliberations, and ultimate decisions were made regarding

conflicts of interest and the selection of Board professionals. This action was a clear and direct violation of the Open Public Meetings Act (“OPMA”), *N.J.S.A. 10:4-1 et seq.*

STATEMENT OF FACTS

1. On or about March 19, 2012, the Washington Township School Board went into a closed session to the exclusion of the public “...Personnel – Personnel Agenda; Contractual – Long Term Substitute Rates; Legal – Senior Privilege Hearing (K.G.), Approval to Affirm the Superintendent’s Decision on the HIB Incidents Reported in the February 28, 2012 HIB Report to the Board, Board Matter” matter pursuant to an unnumbered Resolution. (*See unnumbered Resolution of March 19, 2012 attached hereto as Exhibit “A”*).

2. The closed session discussions of March 19, 2012 were memorialized as follows:

Mr. Comegno stated that on Friday Mr. Goldschmidt and Miss Meehan arranged a conference call with Mr. Altamuro and him to discuss the delivery of mail that some board members received. This was anonymous mail; and in his opinion, it does not exist and does not need to be addressed but needs to be brought to the Board’s attention. Mr. Comegno advised the Board that this is an issue that Mrs. Murphy brought to his attention in January asking if there was an ethical issue voting for this firm, where individuals had contributed to her campaign. There is a case on point that addresses this issue, and there is no ethical violation for voting for this vendor if the individuals making the contribution do not have 10 percent interest in the company, which is the case here. Mr. Comegno asked if anyone had any comments or concerns regarding this matter as this is the place for discussion. Mrs. Abbott disagreed about the anonymity as it is a public record that

she received. She believes that Mrs. Murphy had the obligation to tell the Board or at least the Business Committee. Mr. Comegno responded that there is no policy, school ethics act, or accountability regulations requiring this. Mr. Snyder stated that he thinks Mrs. Murphy takes her Board member obligations seriously whenever we deal with a vendor, but he thinks should have been disclosed. He felt deceived. It doesn't build a family relationship. We need to look at the policy regarding disclosing this type of subject.

Executive Session 3/19/12 Page 4

(See closed Minutes of March 19, 2012 attached hereto as Exhibit "B" Please note the pertinent part as appears above was redacted).

3. The aforementioned records of the closed sessions of the Washington Township Board of Education were obtained through the Washington Township Open Public Records Act (OPRA) in redacted form. The entire closed session Minutes of March 19, 2012 are attached as received including redacted information.

4. The plaintiff submits the defendants have violated the Open Public Meetings Act.

LEGAL ARGUMENT

I. THE ACTIONS OF THE DEFENDANTS, GINNY MURPHY, MEMBER OF THE WASHINGTON TOWNSHIP BOARD OF EDUCATION, STEVE ALTAMURO, PRESIDENT OF THE WASHINGTON TOWNSHIP BOARD OF EDUCATION and THE WASHINGTON TOWNSHIP BOARD OF EDUCATION VIOLATE THE OPEN PUBLIC MEETINGS ACT.

In New Jersey, the former “Right to Know Act” was passed in 1960. L. 1960 c. 173 (formerly codified as 10:4-1 – 10:4-4). Section three of that law provided that “the public shall be admitted to any meetings of a public body at which official action is taken.” Unfortunately, that was construed to include only the final vote on a matter and not the discussions or deliberations leading to the final vote. *See, South Jersey Pub. v. N.J. Expressway*, 124 N.J. 478, 490 (1991).

To correct the above problem, the New Jersey Legislature adopted the Open Public Meetings Action in 1975. By adopting the act, the legislature recognized, “that secrecy in public affairs undermines the faith of the public in government.” N.J.S.A. 10:4-7. Further, the legislature declared that the, “right of the public... to witness in full detail all phases of the deliberation, policy, formulation, and decision making of public bodies is vital to the ... proper functioning of the democratic process...” N.J.S.A. 10: 4-7 (emphasis added). When considering whether a violation of the OPMA has occurred, strict adherence to the letter of the law is required. N.J.S.A. 10:4-21.

Moreover, to make it perfectly clear that these declarations be followed, the final section of the law clearly indicates, “this action shall be liberally construed to accomplish its purpose and the public policy of the state as set forth in section a [N.J.S.A. 10:4-7]. N.J.S.A. 10:4-21. In accordance with this mandate the courts continue to enforce the public policy as enunciated by the statute. *See, In Re Distribution, Casino Simulcasting*, A-0082-06T3 (App. Div. 1-22-2008).

Some 35 years after that the adoptions of this important legislation, the defendants in this case continue to blatantly ignore the law. The New Jersey courts have clearly established the OPMA is violated when formal action is taken in the closed session and never ratified or even discussed in a public session. *Houman v. Pompton Lakes*, 155 N.J.Super. 129, 145, 382 A.2d 413 (Law Div.1977). In *Houman*, the court concluded under the OPMA, the borough council was entitled to hold a closed meeting to discuss whether to take tax appeals and hire outside counsel. However, the council violated the Act by taking formal action because the final decision was not appropriate to be made in a closed session. *Houman, supra*, 155 N.J.Super. at 157, 382 A.2d 413.

“The intent of the statute [*N.J.S.A. 10:4-12(b)(7)*] is to allow officials to meet privately with counselors and advisors in order to discuss policy, formulate plans of action and generally to have an exchange of ideas.” *Id.* at 154-55, 382 A.2d 413 (citing *Woodcock v. Calabrese*, 148 N.J.Super. 526, 535, 372 A.2d 1178 (Dist.Ct.1977)).

Because of the need for strict adherence to the Act, *Dunn v. Mayor & Council & Clerk of Laurel Springs*, 163 N.J.Super. 32, 394 A.2d 145 (App.Div.1978), use of the exceptions is limited. First, the courts have construed subsection 12(b) against closure, in light of the stated legislative intent for openness. *Payton, supra*, 148 N.J. at 556, 691 A.2d 321 (citing *Accardi v. Mayor and Council of N. Wildwood*, 145 N.J.Super. 532, 540-41, 368 A.2d 416 (Law Div.1976)). Second, following the outlined procedure to do so, “if a public body legitimately conducts a ... closed session under any of the exceptions enumerated ..., *it nevertheless must make the minutes of that meeting promptly available to the public,*” once the need expressed for the closed session has been eliminated. *Id.* at 556-57, 691 A.2d 321; *South Jersey Publ'g, supra*, 124 N.J. at 493, 591 A.2d 921. The minutes must “contain sufficient facts and information to permit

the public to understand and appraise the reasonableness of the public body's determination[s]" made in a non-public session. *South Jersey Publ'g, supra*, 124 N.J. at 493, 591 A.2d 921.

"The statutory exemption for personnel matters, recognizing the potentially-inhibiting effect of public debate about the qualifications, performance, merit, and shortcomings of specific employees, allows that debate to occur in executive session." *South Jersey Publ'g, supra*, 124 N.J. 478, 493, 591 A.2d 921 (1991). The exception is "focused on free and uninhibited discussion about matters relating to the hiring, firing, performance, compensation, and discipline of public employees." *Ibid*.

The court in *Burnett* held a citizen's request for injunctive remedies, based on evidence of OPMA violations, may accompany a request for relief sought under N.J.S.A. 10:4-15. *Burnett v. Gloucester County Bd. of Chosen Freeholders*, 409 N.J.Super. 219, 976 A.2d 444, N.J.Super.A.D. (2009). The balance of the perceived violations also should be considered as proofs when determining whether an injunction is necessary to insure future compliance with the Act. Again the court made clear that the heart of the Act seeks to avoid "secrecy in public affairs," which "undermines the faith of the public in government." N.J.S.A. 10:4-7. *Id*. The public interest demands no less than the court's scrutiny of a citizen's challenge to the government's wrongful restraint on the public's participation in the work of the people. *Id*.

In the instant case, the defendants, Ginny Murphy, Steve Altamuro and the Washington Township Board of Education, secretly discussed matters regarding conflicts of interest and the selection of Board professionals which were not later addressed in meetings open to the public.

II. THE PLAINTIFFS MEET THE STANDARDS FOR INJUNCTIVE RELIEF PURSUANT TO RULE 4:52

The standards for issuing a preliminary injunction were clearly established by the Supreme Court in the seminal case, *Crowe v. De Gioia*, 90 N.J. 126 (1982). (1) "a preliminary injunction should not issue except when necessary to prevent irreparable harm." *Id.* at 132. The Court noted, "[i]n certain circumstances, severe personal inconvenience can constitute irreparable injury justifying issuance of injunctive relief." *Id.* at 133. (2) "temporary relief should be withheld when the legal right underlying plaintiff's claim is unsettled; (3) a preliminary injunction should not issue where all material facts are controverted; and (4) the final test in considering the granting of preliminary injunction is the relative hardship to the parties in granting or denying relief. "[T]o prevail on an application for temporary relief, a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits." *Ibid.* "[T]he point of temporary relief is to maintain the parties in substantially the same condition when the final decree is entered as they were when the litigation began." *Id.* at 134 (quoting *Peters v. Public Service Corp. of N.J.*, 132 N.J. Eq. 500 (Ch. 1942), *aff'd. o.b.*, 133 N.J. Eq. 283 (E. & A. 1943)).

The standards for relief pursuant to *Rule 4:52* are also succinctly stated in the Appellate Division in *Ispahani v. Allied Domecq Retailing USA*, 320 N.J. Super. 494 (App. Div. 1999) where the Court finds to obtain a preliminary injunction, the applicant must establish that he will suffer irreparable injury if the relief is denied, that his claim was based on a settled legal right, that the material facts are substantially undisputed, and that the harm to him if the injunction is denied will be greater than the harm to the opposing party if the injunction is granted. *Id.* at 498.

Moreover, "the purpose of a temporary restraining order is to grant temporary injunctive relief on an emergency basis. Its purpose is to preserve that status quo until both parties can

more fully present their positions to the court.” Drier and Rowe, Guidebook to Chancery Practice of New Jersey (3d ed.) at 138.

The legal right underlying this claim is clear. The defendants in this matter blatantly violated the OPMA. The OPMA provides as a remedy that the matter be conducted *de novo*. Moreover, the material facts are not in dispute. The minutes plainly reveal the deliberations and discussions in closed session to the exclusion of the public. In terms of weighing the equities in this matter, it is the defendants that have procured any harm by this flagrant violation of the law. The quicker the committee acts to correct this violation by conducting *de novo* proceedings, the quicker this matter is resolved. If the Washington Township Board of Education choose rather to litigate this matter, then any harm visited is a result of the Board’s doing. The public has a right to witness the deliberations and discussions of the Board of Education. Defendants can very easily cure this problem by holding the proper hearings and meetings in accordance with the law.


Here, all the requirements of the issuance of a temporary restraining order have been met. There is a strong likelihood of success on the merits of plaintiff’s claims. It is undisputed that defendants, Ginny Murphy, member of the Washington Township Board of Education, Steve Altamuro, President of the Washington Township Board of Education and the Washington Township Board of Education, violated the OPMA, N.J.S.A. 10:4-1, et seq.

CONCLUSION

For the foregoing reasons, plaintiff respectfully requests that the Court enter an order temporarily enjoining and restraining defendants, Ginny Murphy, member of the Washington Township Board of Education, Steve Altamuro, President of the Washington Township Board of Education and the Washington Township Board of Education, from the following:

- A. The defendants are enjoined and restrained from any discussions regarding potential conflicts of interest and the selection of Board professionals during closed sessions.
- B. Defendants shall conduct all future meetings in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-1, et seq.

Respectfully submitted,

By: 

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