



**OFFICE OF THE PROSECUTOR
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February 5, 2015

FREDERICK A. D'ASCENTIS
CHIEF OF INVESTIGATIONS

George R. Saponaro, Esquire
The Newbold House
27 Cedar Street
Mount Holly, New Jersey 08060

**RE: Alleged Violation of the Open Public Meetings Act by the
Westampton Township Committee on December 12, 2014
Special Investigations Case SI-15-0036**

Dear Mr. Saponaro:

As you are aware, this Office received a complaint from Gil Gehin-Scott in December, 2014 alleging that members of the Westampton Township Committee ("Committee") violated the Open Public Meetings Act (OPMA) in connection with a Special Meeting held on December 12, 2014. It is my understanding that the Committee initially convened at a regularly scheduled meeting on December 9, 2014 and went into executive session to discuss a personnel matter. Additional time was apparently required for the Committee to consider issues presented during the executive session. The Committee then decided to hold a Special Meeting on December 12, 2014 at 5:30 p.m. Thereafter, Township Clerk/Administrator Donna Ryan posted notice of the Special Meeting on the official bulletin board located in the Westampton Township Municipal Building. Ms. Ryan also forwarded notice of the Special Meeting to both the Burlington County Times and the Trenton Times. Notice was published in the Burlington County Times on the day of the Special Meeting-December 12, 2014. The notice was never published in the Trenton Times.

Mr. Gehin-Scott has alleged that the Committee failed to provide "adequate notice" of the Special Meeting as required under the OPMA. See N.J.S.A. 10:4-8d. On December 22, 2014 I forwarded a copy of Mr. Gehin-Scott's complaint to your attention and sought your response to his allegations. You responded to me on January 5, 2015 by letter dated December 31, 2014. In your letter you advised that the Committee "through its Municipal Clerk [Donna Ryan] complied with the [OPMA] by forwarding notice of the Special Meeting to the Burlington County Times and the Trenton Times forty-eight (48) hours in advance of the meeting". Unfortunately, copies

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of documents pertinent to the notification process which you specifically referenced in your letter were not provided. You subsequently provided some of these documents to me on January 15, 2015. I reviewed your letter along with the recently provided attachments and noted the absence of any documents pertinent to efforts to publish public notice of the Special Meeting in the Trenton Times. I contacted your office on January 30, 2015 and requested these missing documents. On February 3, 2015 you provided me with a certification of Ms. Ryan pertaining to this matter. This certification addressed Ms. Ryan's actions in connection with the transmittal of the notice of the Special Meeting to the Trenton Times. However, documents specifically referred to by Ms. Ryan for her certification were not attached thereto. These additional materials were provided to me on February 3, 2015.

I have reviewed all of the pertinent information that you have provided and considered the arguments advanced in your correspondence. For the reasons set forth below, this Office concludes that the Committee violated the express provisions of the OPMA because it failed to provide "adequate notice" to the public of the December 12, 2014 Special Meeting as mandated by N.J.S.A. 10:4-8d and 10:4-9.

The OPMA is designed to protect "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 such public bodies". N.J.S.A. 10:4-7. Critical to achieving this important public policy is the requirement that public bodies provide "adequate notice" of meetings to the general public except in remarkably limited circumstances which are not applicable in this case. N.J.S.A. 10:4-9.¹ Specifically, N.J.S.A. 10:4-9 provides that "no public body shall hold a meeting unless adequate notice thereof has been provided to the public". Significantly, the term "adequate notice" is defined by the OPMA to mean:

Written advance notice of at least forty-eight (48) hours, giving the time, date, location and, to the extent known, the agenda of any regular, special or rescheduled meeting, which notice shall accurately state whether formal action may or may not be taken and which shall be (1) properly posted in at least one public place reserved for such or similar announcements, (2) mailed, telephoned, telegrammed, or hand-delivered to at least two (2) newspapers which newspapers shall be designated by the public body to receive such notices because they have the greatest likelihood of informing the public within the area of jurisdiction of the public body of such meetings, one of which shall be the official newspaper, ...and (3) filed with the clerk of the municipality when the public body's geographic boundaries are co-existent with that of a single municipality,...

N.J.S.A. 10:5-8d.

Our Courts have been called upon to evaluate and interpret the phrase "adequate notice" as it is used in the OPMA. Critical to their analysis is the legislative mandate to liberally construe the OPMA "in order to accomplish its purpose and the public policy of this State as set

¹ On page 3 of your letter dated December 31, 2014 you readily concede that the Special Meeting held on December 12, 2014 was not necessary to deal with an emergent matter which might permit relaxation of the notice requirements set forth in the OPMA.

forth [therein]". N.J.S.A. 10:4-21. In Worts v. Mayor and Council of Upper Township, 176 N.J. Super 78 (Ch. 1980) the Superior Court Chancery Division concluded that "adequate notice" does not require actual publication of the notice of a meeting of a public body. However, the Worts Court made it abundantly clear that a public body is not therefore relieved of its obligation under the OPMA to provide actual notice to the public of its intent to meet. In Worts, the Court examined the publishing schedules of the four newspapers to which notices were sent and noted that only one could have published notice forty-eight (48) hours before the date of the Special Meeting of the Upper Township Committee. One other paper could have published the notice of the Special Meeting on the day of the meeting. The remaining two papers could not have published the notice until three (3) days after the Special Meeting. The Court noted that

"[W]hen a public body sends meeting notices to newspapers for publication and, to the actual or readily ascertainable knowledge of that body (emphasis added) those newspapers cannot publish the notice at least forty-eight (48) hours in advance of the meeting, there is no compliance with the OPMA. If the opposite were true, the purpose of the law could be easily circumvented".

Worts, supra, 176 N.J. Super at 81-82. The Court noted that the legislative intent reflected in the OPMA requires this logical interpretation. The Worts Court went on to say that

"[I]t is expected that all reasonable efforts to notify the public [of Special Meetings] will be made. The minimum notice to which the public is entitled is written advance notice of at least forty-eight (48) hours. ...it is only when a public body has given forty-eight (48) hours advance notice to newspapers capable of timely publication that it can be concluded that all reasonable effort has been made (emphasis added). It is therefore the obligation of every public body effected by the OPMA, when preparing calendars and sending notices of meetings, to fix dates, except in emergent circumstances, which permits the required notice to be given, having in mind newspaper publication dates, and to use only those newspapers for notice purposes which have the ability to publish notices at least forty-eight (48) hours in advance of meeting dates". (emphasis added)

Id. At 82.

In Lakewood Citizens for Integrity in Government, Inc. v. Lakewood Township Committee/Township of Lakewood, 306 N.J. Super 500 (Law Div. 1997) the plaintiff asserted that the Lakewood Township Committee violated the OPMA because it did not furnish written notice of at least forty-eight (48) hours of a Special Meeting in compliance with N.J.S.A. 10:4-8d. The issue before the Superior Court Law Division was whether it is sufficient for a public body to merely deliver notice to at least two newspapers forty-eight (48) hours before a meeting or whether it must be delivered to two (2) newspapers in time to permit those newspapers to publish the notice forty-eight (48) hours before the meeting. Neither party contended that actual publication must take place forty-eight (48) hours before the meeting. In that case, notice was sent to three (3) separate newspapers only one of which was published daily. It was undisputed that the notice would not have reached the two remaining papers in time to be published forty-

eight (48) hours before the Special Meeting date. Citing Worts v. Upper Township, the Law Division concluded that the Special Meeting was in violation of the OPMA since notice only reached one newspaper capable of publishing forty-eight (48) hours in advance of the Special Meeting.

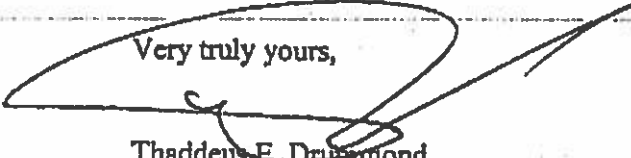
In this particular case, the notice of the December 12 Special Meeting provided to the public was not "adequate" as defined by the OPMA. Ms. Ryan initially attempted to send notice of the Special Meeting to the Burlington County Times on December 10, 2014 at 9:28 a.m. Unfortunately, Ms. Ryan failed to attach the advertisement and was therefore forced to retransmit the notice at 12:02 p.m. This notice was subsequently published on December 12, 2014, the same day as the Special Meeting. The Township of Westampton was in fact billed at least \$12.88 for this publication. It is clear that the notice was sent to the Burlington County Times for publication more than forty-eight (48) hours before the Special Meeting. This, however, does not end the analysis. It is abundantly clear from Ms. Ryan's e-mail communications to the Burlington County Times that she knew that this newspaper could not publish the notice at least forty-eight (48) hours in advance of the meeting. Specifically, in the e-mail communication of December 10, 2014 at 9:28 a.m. Ms. Ryan indicated "can you please put this notice in either tomorrow's paper or the Friday paper?" In the subsequent e-mail communication on December 10, 2014 at 12:02 p.m. she indicates "please print Friday if possible". The plain language of Ms. Ryan's e-mail communications demonstrate that she was aware that timely publication forty-eight (48) hours in advance of the meeting could not be accomplished in this newspaper. Thus, the notice that was sent to the Burlington County Times in and of itself does not comply with the OPMA.

The notice sent to the Trenton Times is even more problematic. In her certification, Ms. Ryan indicates that she sent a copy of the notice via regular mail to the Trenton Times at approximately 9:28 a.m. on December 10, 2014. However, she indicates that she did not intend, let alone expect, the Trenton Times to publish the notice as required by the OPMA. On the contrary, she notes in her certification that "Westampton Township has never requested or paid for actual publication to the Trenton Times" (emphasis added). This is not a situation where the Township has made a reasonable effort to notify the public about a Special Meeting through publication only to have the newspaper fail to fulfill its civic duty. On the contrary, the Trenton Times was incapable of publishing notice of the Special Meeting because it was never directed to do so by Westampton Township. While actual publication may not be necessary for a public body to provide "adequate notice" as contemplated by the OPMA, merely transmitting a public notice to a newspaper with no direction to publish it does not constitute a "reasonable effort to notify the public".

Accordingly, the Westampton Township Committee should take immediate steps to remedy this error including holding another Special Meeting that is properly noticed in accordance with the OPMA. N.J.S.A. 10:4-15. If the Committee determines that it is appropriate to discuss any matters in an executive session at this Special Meeting it must properly adopt a Resolution stating the general nature of the subject to be discussed and stating as precisely as possible, the time when and the circumstances under which the discussion conducted in closed session can be disclosed to the public. N.J.S.A. 10:4-13.

Please notify me in writing on or before February 26, 2015 as to your intentions with respect to this matter. Should the Committee decline to remedy this situation then this Office will take any and all appropriate action as authorized under the OPMA, including action in the Superior Court.

Very truly yours,


Thaddeus E. Drummond
Assistant County Prosecutor
Special Investigations Unit Supervisor

TED:db

cc: Gil Gehin-Scott

Carolyn V. Chang, Mayor

Robert Maybury, Deputy Mayor

Andre Daniels, Township Committee

Patricia Winsett Teleisa, Township Committee

Robert Thorpe, Township Committee