



New Jersey Libertarian Party

Open Government Advocacy Project

John Paff, Chairman

P.O. Box 5424

Somerset, NJ 08875-5424

Phone: 732-873-1251- Fax: 908-325-0129

Email: lpsmc@pobox.com

July 24, 2007

Ronald J. Casella, Esq.
Cumberland County Prosecutor's Office
43 Fayette St
Bridgeton, NJ 08302

Dear Prosecutor Casella:

I write, both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Open Government Advocacy Project, to complain about the manner in which the Maurice River Township Committee enters into, conducts and records minutes of its nonpublic (i.e. executive or closed) meetings.

I recognize that county prosecutors around New Jersey have differing views as to how attentive they should be to allegations of violations of the Senator Byron M. Baer Open Public Meeting Act (OPMA) by local governments within their jurisdictions. One end of the spectrum is represented by the Middlesex County Prosecutor, who in a November 29, 2006 letter (Exhibits 1 – 2), opines that scarcity of resources prohibits his office's involvement in OPMA matters. The other end of the spectrum is represented by the Union County Prosecutor who, as evidenced by his December 13, 2006 letter (Exhibits 3 – 5), conducts extensive and detailed investigations into alleged OPMA violations.

We have no experience with your office, so we would like to know, as a threshold matter, how receptive you are to investigating OPMA infractions, admonishing local agencies that violate the law and assessing penalties against local officials when appropriate. We believe that N.J.S.A. 10:4-17, liberally construed in accordance with N.J.S.A. 10:4-21, fairly places such within your area of responsibility. We also wish to remind you that unlike the Open Public Records Act (OPRA), the OPMA contains no provision allowing a citizen who successfully sues his local government for injunctive or other relief, pursuant to N.J.S.A. 10:4-16, to recover his attorney fees from the errant municipality. (Compare to the attorney fee shifting provision contained within OPRA at N.J.S.A. 47:1A-6.) The net result is that unless county prosecutors agree to be involved themselves in OPMA matter, government officials who violate the OPMA are likely to continue violating it because the costs of litigation will usually dissuade citizen enforcement.

Attached as Exhibit 6 is the “check the box” form of resolution used by the Maurice River Committee before going into nonpublic session. Attached as Exhibits 7 – 9 is my letter to the Municipal Clerk complaining that this form of resolution violates the OPMA a) because it sets up an arbitrary “embargo date” (in this case, September 8, 2007) before which the Township will apparently refuse to provide even redacted versions of its minutes, and b) that the “check the box” form of resolution does not satisfy the requirements of N.J.S.A. 10:4-13, because it doesn’t give the public sufficient information as to the topics the Committee is intending to privately discuss.

In his July 11, 2007 reply, the Township Clerk evidently agreed with me that he cannot arbitrarily withhold the Committee’s closed minutes for six months, as evidenced by the fact that he provided me with the March 8, 2007 closed minutes before their purported “embargo date” of September 8, 2007. However, the Clerk does not acknowledge whether or not other requestors, who may not be as familiar with the OPMA as we are, will receive closed minutes promptly or be made to wait until the Township’s pretended and arbitrary “embargo date.” We are not, of course, interested in getting OPMA compliance for just ourselves, but for every other citizen as well.

Also, Clerk Roy’s July 11, 2007 letter does not even address that part of my June 23, 2007 letter that questions whether the “check-the-box” form of resolution satisfies N.J.S.A. 10:4-13. (Note that the Union County Prosecutor criticized the use of a similar “check-the-box” method in his letter to the Garwood Board of Education—see Exhibit 5). We therefore assume that Maurice River has no intention of changing, or even reviewing, that procedure absent intervention by your office or the Superior Court.

Finally, we wish to bring to your attention the minutes of the two nonpublic meetings held on March 8, 2007 (Exhibits 11 – 14). The stated purposes of the two meetings were to discuss “pending litigation” and “redistricting of Fire District # 5,” respectively.

We find nothing in N.J.S.A. 10:4-12(b) that permits redistricting a fire district to be discussed, as it was at 7:30 P.M., without the public in attendance. Since the exceptions to public meetings are to be strictly construed against closure and in favor of government bodies conducting their business in public¹, we believe that the Maurice River Township Committee violated the OPMA by conducting this discussion privately.

Also, we don’t see how the 6 P.M. discussion with various members the Delmont Fire Company fits into the “pending litigation” exception at N.J.S.A. 10:4-12(b)(7). Even though litigation was filed in May², the March 8, 2007 discussion appears to have little, if anything, to do with that litigation. Moreover, the purpose of (b)(7) is to allow a public body to meeting together in private to formulate its litigation strategy so as to not give an advantage to the other party³. Here, the other party, i.e. the Delmont Fire Company, was

¹ Hartz Mountain Industries, Inc. v. New Jersey Sports and Exposition Authority, 369 N.J. Super. 179, 186 (App. Div.), certif. denied, 182 N.J. 147 (2004).

² Delmont Volunteer Fire Department, Inc. v. Maurice River Township, United States District Court, Docket No. 1:07-CV-02403-NLH-JS, filed May 22, 2007.

³ See Nevin v. Asbury Park City Council, 2005 WL 2847974 (N.J. Super. A.D., November 1, 2005 (unpublished)) stating: “In our view, exception b(7) does not relate to contract negotiations with the opposing party but only, as plaintiffs contend, to discussions *about* contract negotiations by the public body. The

in the room and participating in the closed meeting. Thus, the only ones who were kept in the dark were the public—which is exactly the opposite of the OPMA’s intention.

We greatly appreciate your time in reviewing this matter and forward to receiving your response.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Paff', with a stylized flourish at the end.

John Paff

cc. Hon. Mayor and Committee of Maurice River Township



William F. Lamb, 1st Assistant Prosecutor
Julia L. McClure, Deputy 1st Assistant Prosecutor
Ronald A. Abramowitz, Executive Assistant Prosecutor

**COUNTY OF MIDDLESEX
PROSECUTOR'S OFFICE
PROSECUTOR BRUCE J. KAPLAN**

25 Kirkpatrick Street, 3rd Floor
New Brunswick, New Jersey 08901
732-745-3300
Fax: 732-745-2791



Dennis W. Watson, Chief
Joseph W. Krisza, Deputy Chief

November 29, 2006

Freeholder Christopher Rafano
Middlesex County Administration Bldg.
New Brunswick, NJ 08901

Re: Enforcement of Open Public Meetings Act – Monroe Township
Libertarian Party of Central Jersey Complaint (John Paff)

Dear Freeholder Rafano:

I am in receipt of Mr. Paff's letter to you of November 24, 2006. With regard to same, it remains the position of the Middlesex County Prosecutor's Office to exercise its broad discretion and, accordingly, decline to take the action requested by Mr. Paff. The reasons for this declination are contained in First Assistant Prosecutor William F. Lamb's letter to Mr. Paff dated November 21, 2006.

As you are aware, the obligations and responsibilities of this office are vast and the resources are limited in comparison to those responsibilities. While I appreciate the importance of complying with the Open Public Meetings Act, our limited resources cannot be directed to commencing an investigation and possibly a civil lawsuit in this case. The resources are better directed to those instances where the underlying act is not only criminal, but more importantly, where the complainant/victim has no remedy other than through the Middlesex County Prosecutor's Office. In this particular case, and as noted in Mr. Paff's November 17, 2006 letter and again in his letter to you dated November 24, 2006, private citizens are specifically granted the authority to enforce the act claimed to be violated by Mr. Paff. The legislature anticipated that a County Prosecutor's Office may not be in a position to pursue potential violations of the Act and accordingly provided private citizens with enforcement rights.

First Assistant Prosecutor Lamb did not conclude there was a violation of the Act, but to the contrary, concluded...“this office does not know how accurately the agenda memo reflects the substance of the board's discussions or the extent...”. Rather, he opined that on its face, while the rate of pay for substitute nurses may not properly be the subject of private discussion, an opinion could not be rendered without an investigation.

While I appreciate and commend any person or party that dedicates time to ensuring “good government” and compliance with the laws governing same, this office reiterates our decision not to take any action on this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Bruce J. Kaplan', written over the typed name below.

BRUCE J. KAPLAN
Middlesex County Prosecutor

/jf

UNION COUNTY PROSECUTOR'S OFFICE

32 RAHWAY AVENUE
ELIZABETH, NEW JERSEY 07202-2115
(908) 527-4500
Fax: (908) 289-1267

THEODORE J. ROMANKOW
Prosecutor of Union County

ALBERT CERNADAS, JR.
First Assistant Prosecutor

December 13, 2006

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

**Re: Garwood Board of Education/Open Public Meetings Act
Executive Session Minutes of October 18, 2005, April 6, 2006 and June 20, 2006**

Dear Mr. Paff:

Please be advised that I am in receipt of your letter of November 29, 2006 regarding the Garwood Board of Education and I have reviewed the issues you raised with John Geppert, Jr., the Board's attorney. This letter will address those concerns and Mr. Geppert's response.

1. Meeting of October 18, 2005— it is your position that the closed session minutes did not provide sufficient information regarding Monty Brown and his relationship to the Board of Education for the public to determine the reasonableness of the Board's decision to take no action regarding the matter involving him.

According to Mr. Geppert, Monty Brown was then a member of the Board of Education. Newspaper articles had been published regarding his arrest for possession of marijuana and related paraphernalia on October 9, 2005. He later received a conditional discharge in Municipal Court. (see the attached articles from the Westfield Leader). From the attendant publicity, it was clear that the person referred to in the Board of Education minutes was the same Monty Brown. As noted in the closed session minutes, the Board took no action with respect to Mr. Brown at that time. Under the circumstances, the minutes provided sufficient information to the public regarding this matter.

2. Meeting of April 6, 2006---it is your position that the closed session minutes did not sufficiently detail what occurred during a session that lasted for more than four hours.

According to Mr. Geppert, the Board's position is that the minutes discussing staffing and four separate employees were reasonably comprehensible and therefore sufficient under *N.J.S.A. 10:4-14*. The minutes do not reflect whether the Board made any decisions concerning these matters or merely discussed them. In *South Jersey Publishing v. New Jersey Expressway*, 124 *N.J.* 478, at 493 (1991), the New Jersey Supreme Court stated:

The minutes are intended to recite and disclose any official decision or action taken by a public body, and necessarily must contain sufficient facts and information to permit the public to understand and appraise the reasonableness of the public body's determination. The purpose of the personnel exemption is to facilitate the process by which the public body makes personnel-type decisions, permitting the debate and deliberation to be conducted without public scrutiny or participation. But the exemption is designed to enable the public body to determine the appropriate action to be taken, not to withhold from the public either the public body's determination or the reasons on which its determination was based.

In a subsequent case, *Liebeskind v. Municipal Council of Bayonne*, 265 *N.J. Super.* 389 (App. Div. 1993), the Appellate Division distinguished the holding in *South Jersey Publishing* on its facts. The Appellate Division noted that no minutes of the closed session meeting were provided in *South Jersey Publishing*, and intimated that the Court's holding reflected its concern with the lack of minutes rather than the information contained therein. The Appellate Division held that a public body was not required to reveal the reasons why it took the legislative action it did because "*N.J.S.A. 10:4-14* simply require[d] that what took place at the meeting and what final action was taken should be reflected in the minutes." *Liebeskind*, 265 *N.J. Super.* at 401.

In reconciling these two holdings, it is fair to conclude that any action taken by the Board on the matters discussed at the closed meeting ie. projected staffing, Mr. Sneekloth's employment, Ms. Chilstrom's three-day work week and Mrs. Lipsett working in the main office as a teacher's aide, should have been included in the minutes of the closed session. However, the details of the decision-making process, such as the debate between Board members before any action was taken, and any discussion concerning matters on which no action was taken are not matters that must be included in the minutes.

John Paff
December 13, 2006
Page 3

3. Meeting of June 20, 2006—it is your position that the resolution to go to closed session by the use of the check-the-box for the appropriate exception method is insufficient to give the public adequate notice of what will be discussed. In addition, you contend that discussion of the “glycol problem” at a closed session was not justified under any of the exceptions set forth in *N.J.S.A. 10: 4-12*.

According to Mr. Geppert, the “glycol problem” related to “anticipated litigation” by a contractor and therefore qualified as an exception to the open public meeting requirement under *N.J.S.A. 10: 4-12(b)(7)*. However, the resolution for a closed meeting did not refer to it as such but rather by a check mark next to the phrase “other permitted by law.”

The real issue, as I see it, is not the mistaken designation of the appropriate exception but rather the Board’s reliance on the check-the-box method in every case in which the Board resolves to go to closed session. Each case should be examined on its own facts. For example, in this case, an additional description of the anticipated litigation such as “anticipated litigation regarding a problem in Lincoln School” could have been set forth in the resolution to go to closed session. In personnel cases, an additional description such as “hiring substitute teachers” could be added to the resolution without compromising the integrity of the closed meeting.

By copy of this letter, I am recommending that the Garwood Board of Education review its practices regarding resolutions for closed sessions and minutes of those sessions where official action is taken to provide more details in the appropriate case.

Very truly yours,

THEODORE J. ROMANKOW
Prosecutor of Union County



By: ANN R. RUBIN
Assistant Prosecutor

c: w/ enclosures
John Geppert, Jr., Esq

Maurice River Township
Resolution No. 50-2007

A RESOLUTION AUTHORIZING A MEETING OF THE MAURICE RIVER TOWNSHIP COMMITTEE CLOSED SESSION TO THE PUBLIC.

BE IT RESOLVED BY THE TOWNSHIP COMMITTEE OF MAURICE RIVER TOWNSHIP that a meeting of the Township Committee known as an "Executive Session" to be closed to the public, be held on March 8, 2007

The matter to be discussed deals with an exception to the New Jersey Open Public Meetings Act, specifically N.J.S.A. 10:4-12(a) et seq., and more specifically deals with the following matter(s) or issue(s).

- Federal Law, State Statute, or Rule of Court expressly renders the matter excluded from the provisions of N.J.S.A. 10:4-12(a). The matter involved is _____ N.J.S.A. 10:4-12(b)(1).
- Release of information to be discussed would impair the Township's right to receive funds from the Government of the United States. N.J.S.A. 10:4-12(b)(2).
- The matter to be discussed requires the protection of the individual privacy of _____ N.J.S.A. 10:4-12(B)(3).
- The Committee will be discussing matters of personnel. N.J.S.A. 10:4-12(B)(8).
- The Committee will be discussing a collective bargaining agreement. N.J.S.A. 10:4-12(b)(4).
- The Committee will be discussing the purchase, lease or acquisition of real property with public funds. N.J.S.A. 10:4-12(b)(5).
- The Committee will be discussing setting of bank rates or investment of public funds. N.J.S.A. 10:4-12(b)(5).
- The Committee will be discussing tactics and techniques utilized in protecting and safeguarding property of the public and such disclosure could impair such protection. N.J.S.A. 10:4-12(b)(6).
- The Committee will be discussing an investigation of violation or possible violation of law. N.J.S.A. 10:4-12(b)(6).
- The Committee will be discussing litigation. N.J.S.A. 10:4-12(b)(7).
- The Committee will be discussing matters which involve attorney client privilege. N.J.S.A. 10:4-12(b)(7).
- The deliberations of the Committee after a public hearing may result in an imposition of a specific civil penalty or suspension or loss of a license or permit belonging to the responding party for which the responding party bears responsibility. N.J.S.A. 10:4-12(b)(9).

The matters in question as checked above can be made public on or about
Sept 8 2007 . N.J.S.A. 10:4-13.

Signed: _____

J. Roy Oliver, Township Clerk

John Paff

P.O. Box 5424

Somerset, NJ 08875-5424

E-mail – CJSC@pobox.com

June 23, 2007

Telephone – 732-873-1251

Fax – 908-325-0129

J. Roy Oliver, Clerk
Maurice River Township
590 Main Street - P.O. Box 218
Leesburg, NJ 08327

Dear Mr. Oliver:

I am an open government advocate acting both individually and on behalf of the New Jersey Libertarian Party. I am writing to express some concerns about the Maurice River Township Committee's nonpublic meeting (i.e. closed or executive session) procedure. I have two main areas of concern.

Prompt availability of nonpublic meeting minutes.

N.J.S.A. 10:4-14 requires the Township to make its nonpublic meeting minutes "promptly available to the public to the extent that making such matters public shall not be inconsistent with" N.J.S.A. 10:4-12(b). Yet, Resolution 50-2007, which authorized the March 8, 2007 nonpublic meeting, states that "the matters in question as checked above can be made public on or about September 8, 2007." Also, your March 20, 2007 letter to me stated that the "minutes of the [nonpublic] meeting of 03/08/07 will be available on or after September 8, 2007 or until this matter is concluded." (Emphasis in original)

It appears that you are setting a minimum period—in this case six months—during which the March 8, 2007 nonpublic meeting minutes are to be entirely suppressed. This you cannot do.

In 1997, the New Jersey Supreme Court ruled that

[I]f a public body legitimately conducts a meeting in closed session under any of the exceptions enumerated in *N.J.S.A.* 10:4-12b, it nevertheless must make the minutes of that meeting "promptly available to the public" unless full disclosure would subvert the purpose of the particular exception. If disclosure would subvert the purpose of an exception, then the subversion must be balanced against the applicant's interest in disclosure. We believe that only the unusual case will justify total suppression of the minutes of a closed session; such a case would require great harm to the public interest underlying the exception from even minimal disclosure as well as a negligible interest in disclosure.

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.

Payton v. New Jersey Turnpike Authority, 148 N.J. 524, 556-57 (1997) (Emphasis supplied)

According to Resolution 50-2007, the Committee discussed "litigation" during the March 8, 2007 nonpublic session. Accordingly, it is totally appropriate for you to redact information relating, for example, to the Township's settlement negotiation strategy. If the Committee were to instruct its attorney, for instance, to "initially offer the plaintiff \$20,000 as full settlement, but, if he resists, you have authority to go up to \$25,000," that information must remain secret to prevent the plaintiff from receiving an unfair advantage.

But, the portions of the minutes that disclose other information, such as the parties to and the nature of the lawsuit under discussion, ought to be promptly disclosed. For example, information in the minutes such as "The Township Solicitor announced that he had received a notice of motion for summary judgment from the plaintiff in the matter of John Smith v. Township of Maurice River, Docket. No. CUM-L-000001-07 . . ." should be promptly disclosed to the public. Since filed complaints and motions are already a matter of public record, there can be no harm to the Township's litigation position by disclosure of such innocuous information.

Against this backdrop, it is clearly not proper for you to entirely suppress the minutes for a period of six months. Rather, you should narrowly redact just that material that would, if disclosed, subvert the purposes underlying the exception and promptly publish the remainder. Of course, as time passes and intervening events occur, less and less material will need redaction, and ultimately, the minutes might be able to be disclosed in unredacted form.

Sufficiently detailed nonpublic meeting resolutions.

Resolution 50-2007 reveals only that the Township Committee was going to discuss "litigation" after excluding the public from its March 8, 2007 meeting. This description gives the public and the media virtually no information on the matters being discussed. Is the Township being sued or is it suing somebody? Is it a sexual harassment suit being filed against the mayor by a Township employee, or is it the Township contemplating a condemnation suit against a longtime resident?

As stated above, litigation is a matter of public record. So, why should not the public be informed, specifically, of the litigation that is being discussed behind closed doors?

I believe that the vague manner in which your form of resolution describes the closed session topics prevents the public from best "fulfill[ing] its role in a democratic society¹" as the Legislature envisioned when it passed the Senator Byron M. Baer Open Public Meetings Act in 1975. Frankly, I believe that your present procedure unfairly keeps the public in the dark.

Enclosed is a January 22, 2007 opinion by Hon. Alexander P. Waugh, in Paff v. Monroe Township Board of Education, Docket No. MID-L-7770-06 (2007 WL 191984). In this case, I sued a local school board in Middlesex County and the court ruled at Page 9 that "closed session resolutions should contain as much information as is consistent with full public knowledge without doing any harm to the public interest."

Of course, this unreported trial level decision is not binding upon the Cumberland County courts. I do, however, believe that the courts there are likely to issue a similar decision if the question is presented. With this in mind, do you believe that you should revise your resolutions to make them more specific?

Finally, I have enclosed another record form.

Thank you for your attention to these matters. I look forward to hearing from you.

Regards,

A handwritten signature in black ink, appearing to read "John Paff", with a large, stylized flourish at the end.

John Paff

¹ N.J.S.A. 10:4-7 states that "The Legislature finds and declares that 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 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 hereby declares it to be the public policy of this State to insure the right of its citizens to have adequate advance notice of and the right to attend all meetings of public bodies at which any business affecting the public is discussed or acted upon in any way except only in those circumstances where otherwise the public interest would be clearly endangered or the personal privacy or guaranteed rights of individuals would be clearly in danger of unwarranted invasion.



MUNICIPAL BUILDING, 590 MAIN ST., P.O. BOX 218, LEESBURG, NJ 08327

PHONE: (856) 785-1120

FAX: (856) 785-1974

July 11, 2007

Mr. John Paff
P.O. Box 5424
Somerset, NJ 08875-5424

RE: OPRA Request

Dear Mr. Paff:

Thank you for your \$6.00 check for copies of public records under the OPRA law. Please find same enclosed. Subsequent to my letter of June 28, 2007, our solicitor, Mr. Duffy, has opined that nothing need be redacted from the executive session minutes of March 8, 2007, 6:00 PM and 7:30 PM, (see Resolution #51-2007) and therefore are being forwarded to you in full. In doing so, I believe the questions raised in your correspondence of July 3, 2007 have been satisfied.

In summary, please find enclosed the following:

Maurice River Township Resolution #51-2007
Executive Session Minutes of March 8, 2007, 6:00 PM
Executive Session Minutes of March 8, 2007, 7:30 PM
Resolution #45-2006
Resolution #73-2006
Resolution #127-2006

(You have noted you do not need Resolution #50-2007).

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read "J. Roy Oliver". The signature is written over the typed name and title.

J. Roy Oliver, R.M.C./C.T.C.
Township Clerk

JRO/lc

cc: Township Committee
Edward F. Duffy, Esquire

Thursday, March 8, 2007 6:00 P.M.
Executive Session
Confidential Minutes

PRESENT: Ronald D. Riggins, Sr., Mayor
Andrew Sarclette, Deputy Mayor
Norman Franckle, Committeeman
Edward F. Duffy, Solicitor
J. Roy Oliver, Township Clerk

This meeting has been advertised in accordance with the statutes of the State of New Jersey.

Mayor Riggins called this meeting to order. The purpose of the meeting was to discuss certain pending actions with members of the Delmont Board of Fire Commissioners and Delmont Fire Company.

The Clerk read Resolution #50-2007 authorizing a closed meeting for the purpose of discussing pending litigation. Mr. Sarclette made a motion to adopt Resolution #50-2007, seconded by Mr. Franckle.

Roll Call: Ayes – Sarclette, Franckle, Riggins Nays – None

Present from Delmont were the following people:

Barbara Corson, Fire Commissioner
Wayne Chatten, Jr., Fire Commissioner
Harriet Langlois, Fire Commissioner
Wayne Chatten, Sr., Fire Company (Secretary & Treasurer)
Darlene Chatten, Fire Company (President)
Karen Rafine, Member of Fire Company
Craig Borneman, Member of Fire Company

Mr. Duffy read a letter of resignation from Delmont Board of Fire Commissioners signed by Delia Leith dated September 27, 2006. He also read a letter of advisement from Ms. Leith to the Township Committee dated March 6, 2007 reconfirming the fact that she had resigned as a fire commissioner last fall.

(See end of minutes for these letters.)

Mr. Wayne Chatten, Jr. stated the Board of Fire Commissioners never received this resignation and as far as they are concerned she is still a fire commissioner and in possession of public property valued at \$1,000.00.

Mr. Duffy also noted that, according to the County Board of Elections, notice of the pending fire election wasn't advertised until two (2) days before the election. This irregularity would void the election and the write-in ballots of Mrs. Corson as Fire Commissioner. In addition, Mr. Duffy stated that one cannot be Fire Chief and serve on the Board of Fire Commissioners. Therefore, in light of both these circumstances, Delmont does not have a quorum of fire commissioners to enact any decisions. Consequently, this would negate the validity of the budget.

Regarding Delmont Fire Company issues, only two line officers are certified according to NJ Department of Community Affairs.

In light of all of this, Mr. Duffy advised that the Township Committee has come to the conclusion it is in the best interest of the township to redefine the fire districts.

Mr. Chatten, Jr. responded that as they have retained an attorney, they will only take down our questions and concerns and will not respond.

Mrs. Langlois stated Mr. Brownslow was retained about two years ago by the Fire Commissioners of District #5. Jeanette Lee was chair of the Board of Fire Commissioners at that time. Mrs. Langlois stated Mrs. Lee still has all the records.

Mr. Duffy advised that at the regular meeting on March 15, 2007, an ordinance will be introduced to eliminate Fire District #5. A second ordinance will be introduced to redistrict the area of responsibility between Fire Districts #1 and #2. A public hearing on both will be held at the April meeting. NJ Department of Community Affairs must be notified to ensure an orderly transfer of assets and debt.

Mr. Duffy also opined that, without a certified budget in place, no monies can be spent by the fire district.

Mr. Riggins added that Mr. Chatten Jr. had contacted Committeeman Franckle about insuring a vehicle ostensibly to be purchased by the Fire Department from Mr. Meischke. If the Fire District cannot spend money, how can they pay for this vehicle?

Mr. Chatten Jr. stated that Stanton Lee and Dick Langlois are also certified firefighters.

Mr. Riggins and Mr. Franckle questioned the validity of Brian Meischke's driver's license and therefore his capacity to legally operate a fire truck.

Mr. Duffy reiterated the gist of the Attorney General's opinion that, as no quorum of fire commissioners exists, there is no valid budget. This position is supported by the Township Committee and NJ Department of Community Affairs.

Mr. Chatten Jr. countered that if he can't be a fire commissioner and fire chief, he wants to see resignations from other fire commissioners in other districts.

Mr. Riggins advised an audit is being conducted to investigate the status of all fire commissioners in all districts. He added, "Where are the notices of past meetings of Board of Fire Commissioners District #5? Where are the minutes of these meetings? Where is the list of members of the fire company?"

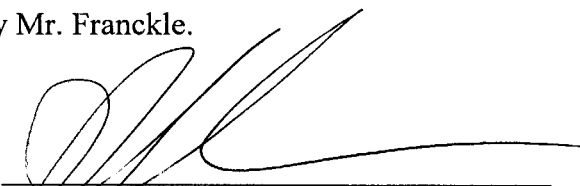
Mr. Duffy raised another issue in that Delmont had asked that Belleplaine and Tuckahoe serve as backup for mutual aid. Tuckahoe is not even on the same radio band as Delmont.

Mr. Duffy advised that the Township would hope for a smooth transition in this matter. It is questionable whether checks can be written since no viable budget is in place.

Mrs. Langlois asked about monies currently in the bank? Mr. Duffy opined that Ray Colavita must be consulted regarding this. Ultimately, Delmont's assets will be redistributed between Districts #1 and #2.

Mr. Sarclette made a motion to come out of executive session, seconded by Mr. Franckle.
Roll Call: Ayes – Sarclette, Franckle, Riggins Nays – None

Mr. Sarclette made a motion to adjourn, seconded by Mr. Franckle.



J. Roy Oliver, Township Clerk

Thursday, March 8, 2007 7:30 P.M.
Executive Session
Confidential Minutes

PRESENT: Ronald D. Riggins, Sr., Mayor
Andrew Sarclette, Deputy Mayor
Norman Franckle, Committeeman
Edward F. Duffy, Solicitor
Raymond Colavita, Auditor
J. Roy Oliver, Township Clerk

This meeting has been advertised in accordance with the statutes of the State of New Jersey.

Mayor Riggins called the meeting to order explaining the purpose of the meeting is to discuss issues with the redistricting of Fire District #5.

The Clerk read Resolution #51-2007 authorizing a closed meeting for the purpose of discussing pending litigation. Mr. Sarclette made a motion to adopt Resolution #51-2007, seconded by Mr. Franckle.

Roll Call: Ayes – Sarclette, Franckle, Riggins Nays – None

Mr. Duffy gave an overview of the issues at hand. The Township Committee is faced with continuing problems with Fire District #5 and Delmont Fire Company. The Township Committee will be introducing an ordinance which will dissolve Fire District #5. Also, another ordinance will be introduced to redistrict what was Fire District #5 between Districts #1 & #2. As Fire District #5's election wasn't properly noticed, Barbara Corson is not a fire commissioner.

Another issue is that one cannot be a fire commissioner and fire chief simultaneously.

Mr. Duffy next referred to the proposed map and ratable redistribution chart from Fire District #5. The purpose of this meeting is to give advance notice to Fire District #1 & #2 of what will transpire over the next few months with regard to the dissolution of Fire District #5, notwithstanding any litigation which might become involved.

The following members of Fire Districts #1 and #2 were present:

Craig Ritchie, Fire Commissioner, District #2
Ed Ritchie, Fire Commissioner, District #2
Al Winters, Fire Commissioner, District #2
Bob Camp, Jr., Fire Commissioner, District #2
Mike Ritchie, Fire Commissioner, District #2
Joe Sterling, Fire Commissioner, District #1
Ed Turner, Fire Commissioner, District #1
Pat Phillips, Fire Commissioner, District #1
Chuck Hand, Fire Commissioner, District #1

Mr. Riggins advised that all fire districts will be audited and dual roles (as fire commissioner and fire chief) will be addressed.

Mr. Craig Ritchie asked what happens if no one runs for fire commissioner?

Mr. Riggins stated the Township Committee had received reports of improper advertisement of the budget and pending election by Fire District #5. This resulted in a lack of quorum of fire commissioners which consequently invalidated their budget and ability to conduct business.

Mr. Sarclette noted there are still good people in Delmont who hopefully will want to get involved with Districts #1 and #2.

Mr. Riggins stated another concern is potential safety issues for firemen.

Mr. Ray Colavita stated he is here to help everyone follow the rules. We now have a public safety issue, especially with the prison. "The buck stops with the Township Committee." The Township Committee has been ordered to redistrict by the State.

Mr. Colavita has to revise the fire budgets for Districts #1 and #2 which will now take into account the area previously covered by District #5. He did a 30%/70% split with Fire District #5's budget, with 30% going to District #1 and 70% going to District #2. Also, Districts #1 and #2 will receive District #5's surplus and cash.

The tax rates shouldn't change more than 1-cent for Districts #1 and #2. However, the numbers will be higher.

The equipment currently being used by District #5 could be used for the other districts. If neither District #1 or #2 wants Delmont's fire truck, this will free money up for the districts to share. NJ Department of Community Affairs suggests the truck be kept, either fire department (#1 or #2) could take over the payments and/or sell the truck. The alternative would be for the vendor to repossess the truck. If so, this would reduce Fire District #1 & #2's budgets.

Mr. Duffy noted the purchase contract for the fire truck was with Fire Company #5. The Township is not dissolving Fire Company #5, just Fire District #5. Mr. Colavita noted that once they are amended, the new budgets for Fire Districts #1 and #2 will have to be adopted. We will need an ordinance delineating the metes and bounds of each fire district to attach to their application.

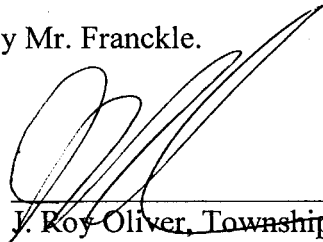
Mr. Duffy state he doesn't know about attachments to the ordinance with regard to assets and debt redistribution. Mr. Colavita recommended the Township pay the utilities in the firehouse of Fire Company #5 to protect the building. Also, with the dissolution of Fire District #5, the lease with the U.S. Post Office operating out of the fire hall would become void.

Monies derived from the USPS after the dissolution is enacted will be distributed to Districts #1 and #2 or all four remaining fire districts.

Mr. Franckle noted the new responsibility for Route 47 will be given to Fire District #1 according to the revised map.

Mr. Sarclette made a motion to come out of executive session, seconded by Mr. Franckle.
Roll Call: Ayes – Sarclette, Franckle, Riggins Nays – None

Mr. Sarclette made a motion to adjourn, seconded by Mr. Franckle.


J. Roy Oliver, Township Clerk