

John Paff

P.O. Box 5424

Somerset, New Jersey 08875

E-mail – CJSC@pobox.com

December 11, 2006

Telephone – 732-873-1251

Fax 908-325-0129

Skylar S. Weissman, Asst. Prosecutor

Mercer County Prosecutor's Office

P.O. Box 8068

Trenton, NJ 08650-0068

(via Fax only to 609-989-0161)

RE: Open Public Meetings Act – Township of West Windsor

Dear Mr. Weissman:

Attached as Exhibit pages 1 through 5 is my August 3, 2006 letter, with attachment, concerning the West Windsor municipal council's use of email to discuss public issues outside of public view.


After we discussed this issue at your office on September 22, 2006, you contacted Michael J. Herbert, Esq., Township Attorney for West Windsor, and advised him to instruct West Windsor's elected officials that they're not allowed to discuss public business, except for meeting times and presumably other very routine matters, via email.

Attached as Exhibit pages 6 though 8 is a December 8, 2006 Princeton Packet article that suggests that West Windsor's municipal council's use of email may require further intervention by your office. Will you please work with that council to develop some objective guidelines for permissible email usage by elected officials?

Or, as suggested in my earlier letter, would you recommend that the Attorney General issue a Formal Opinion on this topic? As we discussed at our September 22nd meeting, use of email by local officials is undoubtedly commonplace throughout the state and the contours of the permissible use of this means of communication may be more appropriately defined at the state level.

Thank you for your attention to this matter. I look forward to hearing from you.

Sincerely,



John Paff

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P.O. Box 5424

Somerset, New Jersey 08875

E-mail – CJSC@pobox.com

August 3, 2006

Telephone – 732-873-1251

Fax 908-325-0129

Joseph L. Bocchini, Jr.
Mercer County Prosecutor
P.O. Box 8068
Trenton, NJ 08650-0068

RE: Open Public Meetings Act – Township of West Windsor

Dear Prosecutor Bocchini:

I am an open government advocate who has come into possession of the enclosed string of emails sent among the mayor and council of West Windsor Township. As you can see, these elected officials engaged in a discussion of whether it was appropriate and fair for the council to have met during daytime, business hours.

The Open Public Meetings Act, which was enacted prior to email being prevalent, declared “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.” N.J.S.A. 10:4-7, emphasis supplied. Here, however, a piece of public business, i.e. the proper hour for council meetings, was “deliberated,” but the public was apparently given no notice of and no right to attend this email “meeting.”

While the topic discussed in this string of emails is somewhat humdrum, I am concerned that more substantial topics could also be discussed and debated via email and that this type private discussion would deprive citizens of their right to witness the deliberations and debate of their public officials. If public issues are completely hashed out via email, the council’s public meetings would be reduced to a formality where previously decided issues were merely ratified. Such a result, of course, would do violence to the goals the Open Public Meetings Act seeks to achieve.

I cannot find any New Jersey authority that addresses this topic, although other states have addressed similar issues regarding telephonic communications.¹ As Prosecutor, you are empowered to investigate Open Public Meetings Act issues and to pursue civil penalties in appropriate cases.² While I doubt that the West Windsor officials’ conduct was willful and deserving of punishment, I do believe that the issues raised in this letter are likely to be widespread and deserving of attention by someone in authority.

Would you render an opinion that would explore the do’s and don’ts, and provide some guidelines for email communication between members of public bodies? If you believe that

¹ See, e.g. La. Atty. Gen. Op. No. 1992-166; Ks. Atty. Gen. Op. No. 80-173; Open Meeting Laws 2d, Ann Taylor Schwing, § 6.38 “Use of letters, the telephone or other forms of written or electronic communications will typically not avoid a violation of the open meeting laws if the same communications would be a violation if conducted in person.”

² N.J.S.A. 10:4-17.

rendering such an opinion would be improper, would you at least recommend that the Attorney General issue a formal opinion on this topic?

Thank you for your attention to this matter. I look forward to learning your thoughts on this matter.

Sincerely,

A handwritten signature in black ink, appearing to be "John Paff", written in a cursive style.

John Paff

cc. Sharon L. Young, West Windsor Township Clerk, with attachment, for distribution to the Mayor and Council.

From: [Linda Geevers](#)

To: [Charles Morgan](#) ; [Franc Gambatese](#) ; [Hassan Syed](#) ; [Heidi Kleinman](#) ; [Lynn Miller](#) ; [Martin OShea](#) ; [Peter Shaughnessy](#) ; [Rick Sinding](#) ; [Shing-Fu Hsueh](#) ; [Sharon Young](#) ; [Barbara Pfeifer](#)

Sent: Wednesday, August 02, 2006 11:15 PM

Subject: Re: Township Council special meeting

To All,

The meeting that is scheduled and posted for Friday, August 4th at 1pm is for the purpose of continuing discussion on the draft Council Procedural Guidelines revisions and an additional draft guideline/process for handling

Any future municipal vacancies (mayor or council member). This is a work session meeting and I have made it clear to every Council member that the work product of this meeting will be put on the agenda of an upcoming, regularly scheduled evening meeting, possibly at the August 14th Business Meeting.

I have also spoken this evening to Mr. Syed, chair of the Human Relations Council, regarding the concerns he raised in his email to Council. I explained the process to him and assured him that the draft revised Procedural Guidelines and the draft of a new vacancy guideline would be brought forward in the near future at a regularly scheduled evening meeting. He was thankful for the clarification since some of the members of the Human Relations Council thought that we would be voting on a new vacancy guideline during a daytime meeting. I assured him that is not the case.

The work session meetings are open to the public and there is a period of public comment. Not everyone can attend evening meetings and so this gives the public an opportunity to sit in on a work session meeting during the daytime. I do not anticipate that we will have routine daytime work session meetings. We have also been trying to accommodate varying schedules so that the Clerk can have the revised Procedural Guidelines printed this month.

One final note, juggling one's personal schedules around public duties is not always easy. It is challenging for all Council members.

Linda Geevers

----- Original Message -----

From: "Charles Morgan" <chasly@comcast.net>

To: "Franc Gambatese" <francgambatese@francgambatese.com>; "Hassan Syed"

<hassansyed@yahoo.com>; "Heidi Kleinman" <heidikleinman@comcast.net>; "Linda Geevers"

<neil.linda@att.net>; "Lynn Miller" <wwpinfo@aol.com>; "Martin OShea" <martinoshea70@msn.com>;

"Peter Shaughnessy"

<peter@wwpinfo.com>; "Rick Sinding" <rsinding@pacpub.com>; <SFHsueh@aol.com>; "Sharon Young" <

Syong@WestWindsorTwp.com>; <windsorspeaks@comcast.net>

Sent: Wednesday, August 02, 2006 7:59 PM

Subject: RE: Township Council special meeting

Everyone --

This is weird. I didn't know that this was a business meeting or even an agenda session.

By copy of this note I am asking Sharon whether this meeting has been noticed for action. If not, I don't see the big deal. If so, then I would say that the notice for action was a mistake and we shouldn't be planning on taking action at this special meeting.

There are three issues here -- first, the question whether the public is being deprived of access to council deliberations, second whether the public is being deprived of input to council actions, and third, the question whether a council meeting should go forward without all members in attendance.

The public isn't being denied access to this meeting any more than they would be denied access if we held it at any other time, including Saturdays. Note that Saturdays automatically exclude a significant part of our community (due to the Jewish Sabbath and conflicts with children's sports). The minutes will be available, including tapes if we tape the meeting (I am an advocate of taping).

The public is not being denied input into our process since the public would not have input at a work session anyway. Moreover, the public will have an opportunity to provide input at such time as the final work product (or another draft) comes up for deliberation and action at a regular business or agenda session.

If a member of council cannot attend and objects to a meeting occurring in his or her absence, the meeting shouldn't occur if actions of paramount importance to that person otherwise would be taken.

But there are many times when one or two members of council (and many members of the public) cannot attend a meeting for one reason or another -- that doesn't mean that the meeting should not occur. It should occur. It happens all the time. The only exception would be if a member of council requests that a matter be deferred until a time when that person can be present for the deliberations and action (absent a time constraint or similar emergency).

We should always accommodate, absent exigent circumstances, any member of council who asks that any actions on any matter be deferred until that person can be present.

I was under the impression that we would not be taking any action at the special meeting. I was also under the impression that it is simply a work session and any work product from the session would be subject to further discussion and action only at a later time. I don't see any significant reason why anyone who cannot attend this meeting should object since there will be ample opportunity for that person to provide input and participate in any action to be taken when it comes before in more finished form.

Finally, I was under the impression from Linda's note that Franc did not object to the meeting going forward without him. If he was going to object, he should have objected before it was scheduled to go forward so that we could have discussed his concerns and made a decision that reflected on those concerns.

Charlie

-----Original Message-----

From: Franc Gambatese [<mailto:francgambatese@francgambatese.com>]

Sent: Wednesday, August 02, 2006 4:59 PM

To: Hassan Syed; Charlie; Heidi Kleinman; Linda Geever; Lynn Miller; Martin OShea; Peter Shaughnessy; Rick Sinding; SFHsueh@aol.com; Sharon Young; windsorspeaks@comcast.net

Subject: Re: Township Council special meeting

Council Members:

I agree with Mr. Syed on this 100%. This practice is becoming a dangerous routine. I came to a meeting on a weekday morning last week and had to drag my children with me, lock them in the Council Office with breakfast and coloring books for 1.5 hours, then leave early to go to work. This was ridiculous. I then made it clear that I could not make Friday morning's meeting to discuss a topic (Codes of Conduct for Council

Members) that I brought to everyone's attention for very serious reasons. That I will not be included in this discussion is a joke. This Council is forcing me to choose between my job and my obligation to serve the residents of this community.

I also concur with Mr. Syed that it is absolutely wrong to conduct Council Meetings when most of the community is unavailable to watch or participate. I would also submit (again as I have for the past 3 years) that ALL council meetings be broadcast in their entirety so the public has a chance to review our business during re-broadcasts at their leisure.

We are doing the residents of West Windsor a huge disservice and creating an air of secrecy for no reason.

Franc

Dear Council members:

As Chair of the Human Relations Council I have been directed to send the following message on behalf of the HRC to the Township Council.

At the meeting of the Human Relations Council held on August 1, 2006 members expressed concern at the time and day of the Special Meeting being held by the Township Council.

Members objected to the date and time due to the fact that a meeting of such importance and substance should have been well advertised, with lots of notice and held at a time when maximum participation can be expected. Since the Council represents the community, more members of the community should get a chance to be present and express their views on the subject being discussed in this special meeting.

The concern about the time is obvious. Most people work and a majority works away from West Windsor. A lot of them work as far away as New York city. Therefore all such persons in all likelihood will not be able to attend this special meeting. This is a recipe for low turnout by design and as such against the spirit of the special meeting and the interest of the community, which the Town Council represents and serves.

Regards,

Hassan R Syed

E-mail issue flares up again at West Windsor council

*By: Molly Petrilla , Staff Writer
Princeton Packet
December 8, 2006*

After a lull, electronic correspondence becomes focus of testy debate

WEST WINDSOR — Despite past warnings, some members of the Township Council say their colleagues continue to correspond frequently through e-mail — occasionally to the point of near-deliberation.

"It was quiet for a while after I brought it up over the summer, but now it's reared its head again," Councilman Franc Gambatese said, referring to members' propensity to discuss important issues through e-mail.

In fact, he said, the situation has become so troubling that he's requested to be left off group e-mails and has asked council members instead to contact him by phone or an e-mail through the clerk's office.

Council President Linda Geevers acknowledged that e-mail use is still an issue for the council, and said messages have proliferated in recent weeks as some councilmen attempt to exchange edited versions of pending ordinances and resolutions electronically.

In particular, she said drafts of a town center ordinance, a taxicab ordinance and a resolution outlining guiding principles for redevelopment have gone back and forth between some members of the council, resulting in a "flare-up" of e-mail exchanges.

If substantial deliberation takes place in these exchanges, the e-mail messages could constitute a closed-door meeting, in violation of the state's Open Public Meetings Act.

"I try to limit my (e-mail) use as much as I can, but that doesn't mean others do," Ms. Geevers added.

Councilman Charles Morgan insisted that council members aren't doing anything illegal.

"Just because I sent an e-mail to four people doesn't mean I've met with them or deliberated with them," he said. "To call (an e-mail) a meeting is silly."

Issues regarding council members' electronic messages surfaced about a year ago and reached a boiling point last summer when Mr. Gambatese issued a strongly worded statement, part of which read: "I have also repeatedly told all (council) members in the past that I find that this council's use of e-mail borders on deliberation. I feel it is inappropriate. I feel I can prove it if I had to."

At that time, Township Attorney Michael Herbert Sr. discussed the issue with members of the council, citing two state laws that could put certain e-mail exchanges in jeopardy.

"When e-mails are sent out to the entire council, it could constitute a meeting for which the public has not been included," he explained, adding that a resolution or ordinance adopted as a result of e-mail discussion could be invalidated.

The Open Public Meetings Act — also known as the Sunshine Law — prohibits such de facto meetings, while the Open Public Records Act guarantees residents access to council e-mails if they request them.

"There is this dialogue going on electronically that the public is not a part of, and that's the real problem," Mr. Gambatese said. "I think it's a slippery slope."

But Mr. Morgan, who travels frequently for business, points out that e-mail is often the most convenient way to contact other council members.

"We need to get everybody on the same page recognizing that e-mail is an important tool that we should be allowed to use," he said.

Newly elected Councilman Will Anklowitz has been on the council for about a month now, and said he frequently uses e-mail to correspond with his colleagues and township staff members.

"I get e-mails every day," he said. "Sometimes it's about an ordinance or scheduling, sometimes it's about football."

While Mr. Gambatese said some e-mails have come too close to deliberation, he also raised another complaint about the council's electronic exchanges — a lack of civility.

"In the dialogue that goes on between council members via e-mail, some of the stuff is pretty nasty," he said. "This is where the council has had some real falling-outs with one another.

"I'll say I don't agree with an e-mail that was sent and that we need to stop because it's a violation, and I get a nasty-gram back attached to every other member of the council," he added.

Mr. Gambatese blames the electronic medium for such exchanges, and said many people find it easier to fire off an angry e-mail than confront someone over the phone or face-to-face.

Ms. Geevers agreed. "I always try to tell people, 'Don't write an e-mail when you're angry, and keep in mind that when you write it, the rest of the world might read it,'" she said.

Both Ms. Geevers and Mr. Anklowitz said members often use e-mail as a way to tweak issues to save time in the council's notoriously long meetings for debate and deliberation.

But according to Ms. Geever, such fine-tuning could instead be done by a policy or ordinance subcommittee that would meet publicly to prepare ordinances and resolutions for agenda sessions.

"It's a way we can have some more discussion in what I believe is a much more appropriate setting," she said.

But Mr. Morgan has another solution in mind.

"The township needs to set up e-mail accounts for all of us on its servers — that way the clerk can have access to any of our e-mails," he said.

Mr. Ankowitz said he requested a township address shortly after he won his seat on Nov. 7 — and plans to continue using it to contact his colleagues.

"From my point of view, there's nothing I say in an e-mail I wouldn't say elsewhere," he added. "If you didn't do anything wrong, it shouldn't be a problem."