



New Jersey Libertarian Party

Open Government Advocacy Project

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Hon. Terry Warrelmann, Mayor, and members of the
South Bound Brook Borough Council

12 Main St

South Bound Brook, NJ 08880 (via e-mail only to DKazar@SouthBoundBrook.com)

Hon. Allison Lih-Thiessen, President, and members of the
South Bound Brook Board of Education

122 Elizabeth St.

South Bound Brook, NJ 08880 (via e-mail only to Leonhardt@rmschool.com)

Ladies and Gentlemen:

I write both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Open Government Advocacy Project to inquire about the process that the Board of Education and Council will employ, in accordance with N.J.S.A. 18A:22-37, to consult with each other so that the Council can "determine the amount [that] is necessary to be appropriated for each item" in the recently defeated school budget.

I've transcribed the following exchange between a citizen, Dennis Eickhorst, and a Borough official (who I believe to be the Mayor) from the video of the Council's May 5, 2009 agenda meeting available at www.sbbdems.com .

Eickhorst: You guys just set up a committee meeting to discuss the school budget. Is that going to be open to the public?

Mayor: No.

Eickhorst: OK.

Mayor: That will be a work session.

Eickhorst: OK. There's no desire from any of you guys to open it up to the public?

Mayor: That will be a work session between the council and the school board .

Eickhorst: OK. That's all I want to know. Thank you

Mayor: That has been done for years, that's the way we always do it. We have that and then we bring back the recommendation and vote on it publicly.

Eickhorst: I just figured that the public might want to know about this, that's all. Thank you.

Mayor: The results will be given to you in public.

This exchange, as well as some of the comments that have recently appeared on the nj.com forums, make it appear that three representatives each from the Council and Board will meet with each other, without the public being permitted to observe, to flesh out the details as to what cuts, if any, will be made the school budget. It further appears that the representatives from both bodies will, during these private meetings, prepare a recommendation that will be presented to the Council. The Council will then meet in public to discuss and vote upon the recommendation presented to it.

If this is the process that will be employed, I believe that it violates at least the spirit of the Sen. Byron M. Baer Open Public Meetings Act (OPMA). And, if I am correct in understanding that the private meetings will be attended by three members of the Board and three members of the Council, then I believe that the process violates the letter of the OPMA.

The Spirit of the OPMA

The OPMA's legislative findings state that it is "vital" for citizens to be able "to witness in full detail all phases of the deliberation, policy formulation, and decision making of public bodies" and 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." N.J.S.A. 10:4-7.

Based on that statement, the Legislature went on to say that it is New Jersey's public policy "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." N.J.S.A. 10:4-7.

It appears that the joint committee, consisting of members of both the Board and Council, is designed to come up with a recommendation that will be voted upon in public. While I can understand that a smaller body, such as this joint committee, may be able to operate more efficiently than the entire Council and Board meeting together, I am having trouble understanding how the right of the public to witness the deliberations and policy formulation "in full detail" is being accommodated by this arrangement.

Is it South Bound Brook's intention to have the potential budget cuts vetted, prioritized and formulated in private and then have the final result voted upon in public with little or no debate? If so, I believe that the Borough's process fails to honor the

Legislatures strongly pronounced policy favoring public involvement in the decision making process.

The Letter of the OPMA

If a quorum of the Council consists either of four members of Council or the Mayor plus three members of Council (see N.J.S.A. 40A:60-3(d)), then three members of the Council, or the Mayor and two members of the Council, could legally decide an issue at any meeting at which only a bare quorum is present. Thus, it appears at least arguable that three members¹ of the Borough Council constitute an "effective majority" and can gather together only after giving "adequate notice" of its meeting. N.J.S.A. 10:4-8(b) and (d) and see Riya Finnegan, LLC v. Township Council of South Brunswick, 386 N.J.Super. 255, 260-61 (Law. Div. 2006).

I am informed that the Board of Education consists of seven members with a quorum of four. According to the argument set forth above, three members constitute an "effective majority" of the Board.

If it is true that the joint committee that will consider the defeated budget consists of three members each from the Council and the Board, it would appear that the public has a statutory right to attend and observe the joint committee meetings because an "effective majority" of both the Council and Board will be present.

Conclusion

I ask that the Board and Council allow the public to attend the joint committee meetings, even if the Board and Council don't agree that such is strictly required by the OPMA.

I appreciate your time and look forward to receiving your response.

Sincerely,



John Paff

¹ Further, if the Mayor can only vote to break a tie (see N.J.S.A. 40A:60-5(c)), then it is arguable that only two members of the Borough Council can constitute an effective majority. For example, the Mayor and three Council members (i.e. a quorum that can legally transact business) are at a meeting and a motion is passed by the three Council members by a vote of 2 to 1, then the mayor cannot legally vote because that vote would not "break a tie." Thus, under this argument, two members of the borough council constitute an "effective majority."