



New Jersey Libertarian Party

Open Government Advocacy Project

John Paff, Chairman

P.O. Box 5424

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May 12, 2009

Hon. Fran Enright, Mayor, and members of the
Spring Lake Heights Borough Council
555 Brighton Avenue
Spring Lake Heights, NJ 07762 *(via fax only to 732-449-8264)*

Hon. James Hackett, President, and members of the
Spring Lake Heights Board of Education
1110 Highway 71
Spring Lake Heights, NJ 07762 *(via fax only 732-449-9492)*

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 is employing, 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 understand that on Thursday, May 14, 2009, three representatives from the Council and an unknown number of representatives from the 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 to the school budget. It further appears that the representatives from both bodies will, during this and perhaps other 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 Council and at least two members of the Board, 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 Spring Lake Heights'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 five members with a quorum of three. According to the argument set forth above, two 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 at least two members of the Board, it would

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."

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. Will the Council and Board make this meeting public? If not, I ask that you please inform me of exactly which members of the Council and the Board will be present at the Thursday's meeting.

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

Sincerely,

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

John Paff

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**McOmber
& McOmber**

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May 13, 2009

VIA TELEFAX & ORDINARY MAIL

New Jersey Libertarian Party
Open Government Advocacy Project
P.O. Box 5424
Somerset, NJ 08875

Attention: John Paff, Chairman

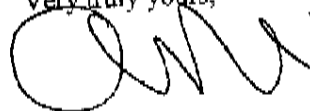
RE: Board of Education of the Borough of Spring
Lake Heights, in the County of Monmouth
Our File No. 7724

Dear Mr Paff:

This firm serves as general counsel to the Board of Education of the Borough of Spring Lake Heights, in the County of Monmouth ("Board of Education"). I have been forwarded a copy of your letter of May 12, 2009 addressed to the President and Members of the Board of Education and the Mayor and Members of the Borough Council of the Borough of Spring Lake Heights ("Borough Council"). This letter shall serve as a response on behalf of the Board of Education.

Please be advised that only one Member of the Board of Education will attend the meeting referenced in your letter. As such, I do not believe it is necessary to address any of the legal arguments contained in your letter. If you have any questions or require additional information, please do not hesitate to advise me.

Very truly yours,



R. ARMEN McOMBER

RAM:fh

cc: Spring Lake Heights Board of Education
Attention: James Hackett, President (via ordinary mail only)
Ruth Ziznewski, Superintendent of Schools (via telefax only)
Frederick C. Raffetto, Esquire (via telefax only)

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FREDERICK C. RAFFETTO**

IN MEMORIAM:
LEON ANSCHELEWITZ (1929-1986)
MAX M. BARR (1929-1993)
MILTON M. ABRAMOFF (1935-2004)
STEVEN J. BRODMAN (2004-2006)

May 14, 2009

VIA FACSIMILE 908-325-0129 & REGULAR MAIL

John Paff, Chairman
New Jersey Libertarian Party
Open Government Advocacy Project
Post Office Box 5424
Somerset, NJ 08875

**Re: Borough of Spring Lake Heights (Monmouth County)
School Budget Issues
Our File No. 68753-0**

Dear Mr. Paff:

As you may recall, this firm serves as General Counsel to the Borough of Spring Lake Heights (the "Borough") in Monmouth County. In that capacity, I have been provided with a copy of your letter of May 12, 2009, which was addressed to the Mayor and Members of the Borough Council as well as to the Board of Education President and Members of the School Board. Please consider this letter as a response on behalf of the Borough.

Please be advised that only one (1) member of the five (5) member Borough Council will be attending the informal meeting that has been scheduled for this evening. That Council member, who also serves on the Council's Finance Committee, will be meeting with the School Superintendent (who is not a School Board member) to informally review certain matters related to the School budget. This meeting is intended to be an informal working session, and is not intended to be open to the public. No final decisions shall be made with regard to the budget this evening.

Following tonight's meeting, the Borough's designated Council representative shall bring recommendations back to the full Borough Council for a discussion, dialogue and debate, which shall occur at a special meeting of the full Borough Council, which has been scheduled for **Monday, May 18, 2009 at 6:00 p.m.** The School Budget will be the only item on the agenda at that meeting, and it is anticipated that the full Council shall take some action regarding the

Celebrating Our 30th Anniversary

John Paff, Chairman
New Jersey Libertarian Party

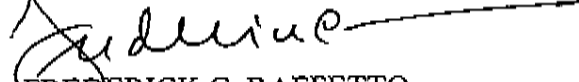
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School budget at that time. That meeting shall be noticed in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq., and shall be open to the public.

Since only one (1) member of the Borough Council will be attending tonight's informal meeting, I do not believe that it is necessary to address any of the legal arguments contained in your letter.

Should you have any further questions or require additional information, please do not hesitate to contact me. Thank you very much.

Very truly yours,



FREDERICK C. RAFFETTO
A Member of the Firm

FCR:cma

cc: Mayor Frances Enright (via telecopy only)
Members of the Borough Council (via telecopy only)
R. Armen McOmber, Esquire (via telecopy only)

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