

Libertarian Party of Central New Jersey

Open Government Task Force
John Paff, Task Force Chairman
P.O. Box 5424
Somerset, NJ 08875-5424
March 14, 2006

Ann R. Rubin, Esq., Assistant Prosecutor
Union County Prosecutor's Office
32 Rahway Avenue
Elizabeth, NJ 07202-2115

RE: Union County Improvement Authority
Open Public Meetings Act

Dear Assistant Prosecutor Rubin:

The Libertarian Party of Central New Jersey has created an Open Government Task Force of which I am the chairman. The Task Force's goal is to bring all local government agencies in our tri-county area (Somerset, Middlesex and Union Counties) into full compliance with the Open Public Meetings Act, Open Public Records Act and other open-government statutes and regulations.

The Open Public Meetings Act, N.J.S.A. 10:4-17¹, empowers your office to enforce monetary penalties against officials who knowingly violate the Act. We assert that the Elizabeth Board of Education has indeed violated the Act and ask that you investigate the following matters and take whatever action you deem appropriate.

We base our complaint upon the following documents, all of which are attached as exhibits:

February 2, 2005 Public Meeting Minutes, page 1 (Exhibit A)
February 2, 2005 Closed Meeting Minutes, 1 page (Exhibit B)
March 14, 2006 email from the UCIA, 1 page (Exhibit C)

Critical, in our view, is Mr. Faughnan's statement in Exhibit C that "there is no resolution for executive session" other than the motion contained in the minutes. The motion set forth in Exhibit A, however, informs the public only that the Union County Improvement Authority (UCIA) "went into Executive Session at 7:31 pm."

N.J.S.A. 10:4-13 states:

¹ We specifically reserve our right to also enforce the Board's future compliance through the civil remedies provided by N.J.S.A. 10:4-16.

No public body shall exclude the public from any meeting to discuss any matter described in subsection [10:4-12] until the public body shall first adopt a resolution, at a meeting to which the public shall be admitted: a. Stating the general nature of the subject to be discussed; and b. Stating as precisely as possible, the time when and the circumstances under which the discussion conducted in closed session of the public body can be disclosed to the public.

The motion passed by the UCIA, unfortunately, does not provide the "general nature of the subject to be discussed" nor does it give any indication of the "time when and the circumstances under which the discussion" may be publicly disclosed. We assert that the UCIA violated the Open Public Meetings Act in this regard.

We are concerned that the UCIA, like many other public bodies, may take the position that it can comply with N.J.S.A. 10:4-13 simply by passing a resolution stating its intention to discuss "personnel matters" or "pending litigation" in closed session. If the UCIA were to take such a position, we would argue that more specificity, such as the title of the employment position sought to be filled, or the names of the parties to any filed civil complaint, must be set forth in the public resolution.

We find support for this proposition in Council of New Jersey State College Locals, NJSFT, AFT/AFL-CIO, Local 2364 v. Trenton State College Bd. of Trustees, 284 N.J. Super. 108 (L.1995). There, the Court found that the defendant Board's practice of passing a very general resolution whenever it desired to go into closed session did not comply with Open Public Meetings Act in that it did not "afford the public any real knowledge of the Board's executive-session proceedings." The Court, at page 113, further stated:

The Board's notice is framed so broadly that it does no more than tell the public that there will be a meeting in executive session. The notice merely recites the litany of exceptions which would allow it to proceed in closed session. No attempt is made to indicate which one or ones of these exceptions are relevant to a particular closed-session proceeding. This complete failure to delineate which subject or subjects will be discussed in closed session does not comply with the statutory mandate that the public know the general nature of the agenda.

To paraphrase the highest court of another state, a body which only announces "legal matters" or "personnel negotiations" for going into executive session has said nothing. It might as well have stated to the audience, "Ladies and gentlemen, we are going into executive session," and stopped there. Hinds County Board of Supervisors v. Common Cause of Mississippi, 551 So.2d 107, 114 (MS 1989).

Accordingly, we assert that a) the simple motion passed by the UCIA on February 2, 2005 does not comply with N.J.S.A. 10:4-13, and b) that going forward, the UCIA needs to pass pre-closed session resolutions that are specific enough to advise the public of what is being discussed.

Thank you for your attention to this matter. We look forward to learning the results of your investigation and what action, if any, that you have elected to take.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Paff", written over a vertical line.

John Paff
Task Force Chairman

Union County Improvement Authority
Minutes of Meeting
February 2, 2005 7PM

Chairman Corvelli called the meeting of the Union Comity Improvement Authority to order at 7:27pm.

Director DeFilippo read the "Open Public Meetings Act" as follows: In compliance with Chapter 131, Open Public Meetings Act of the State of New Jersey, adequate notice has been given to all members of the public by publication in the Star Ledger and the Courier News. Also by posting notice in the Administration Building, Elizabethtown Plaza, Elizabeth, NJ 07207 and at the Union County Improvement Authority, 10 Cherry Street, Elizabeth, NJ 07202.

Roll Call showed the following members present: Mr. Boright, Mr. Corvelli, Mr. D'Elia, Mr. Miskiewicz, Mr. Salerno, Mr. Scutari and Ms. Vollero. Ms. Hines and Ms. Ladines were absent.

Pledge of Allegiance led by Mr. Salerno.

Mr. Miskiewicz made a motion and seconded by Mr. Boright to accept the minutes of the January 5, 2005 meeting as printed. Roll call: Mr. Boright - yes, Mr. Corvelli - abstain, Mr. D'Elia - yes, Mr. Miskiewicz - yes, Mrs. Vollero - yes, Mr. Salerno - yes, Mr. Scutari - yes. Ms Hines and Ms. Ladines were absent. Motion carried.

A motion was made by Mr. Miskiewicz and seconded by Mrs. Vollero to go into Executive Session at 7:31pm.

Executive Session adjourned at 7:51.

New Business:

RESO 05-2005

RESOLUTION OF THE UNION COUNTY IMPROVEMENT
AUTHORITY PROVIDING FOR THE ELECTION OF A CHAIRPERSON

Motion made by Mr. Miskiewicz to re-appoint Peter Corvelli as Chairman, Seconded by Mrs. Vollero, Roll Call: Mr. Boright - yes, Mr. Corvelli - yes, Mr. D'Elia - yes, Mr. Miskiewicz - yes, Mr. Salerno - yes, Mr. Scutari - yes and Mrs. Vollero - yes. Ms. Hines and Ms. Ladines were absent. Motion carried.

Executive Session
2/2/05

Chairman Corvelli called for an Executive Session to discuss Personnel matters. Chairman Corvelli asked for a report on the performance of Ann C. Lord, recording secretary, of the UCIA. Executive Director DeFilippo indicated that Mrs. Lord was maintaining all records and working on storage of permanent records and other long standing issues. After discussion, Chairman Corvelli indicated he would reappoint and provide a raise for Recording Secretary Ann C. Lord from \$20,395 to \$21,313 a year. Discussion proceeded at length on the increased demands on staff and the need to look at additional staff.

Subject:
From: "Sean Faughnan" <sfaughnan@ucnj.org>
To: <cjsc@pobox.com>
Cc: "Marlena Russo" <mrusso@ucnj.org>

Mr. Paff:

I apologize for the wait for these documents. These are the executive minutes for the meeting you requested. There is no resolution for executive session; a motion was taken, which is mentioned in the minutes. I will be mailing out copies of both minutes to you today.

Once again, I apologize for the delay. If you have any future requests, please fax them to the Improvement Authority fax number which is 908-820-9874.

Thank you,
Sean Faughnan
Union County Improvement Authority



[Executive Session 22052.pdf](#)



[Executive Session 714042.pdf](#)

Exh. C

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

June 8, 2006

Jonathan Williams, Esq.
DeCotiis, Fitzpatrick, Cole & Wisler
500 Frank w. Burr Boulevard
Teaneck, New Jersey 07666

**Re: Union County Improvement Authority
Open Public Meetings Act
March 14, 2006 Letter of John Paff**

Dear Mr. Williams:

Complaints regarding violations of the Open Public Meetings Act are referred to my attention at the Union County Prosecutor's Office. In that capacity, I am writing to you as the attorney for the Union County Improvement Authority based on my receipt of the attached letter from John Paff.

Mr. Paff's concern is that on February 2, 2005 the Authority went into executive session without passing the required resolution authorizing same pursuant to *N.J.S.A. 10: 4-13*. In that respect, he is correct. Accordingly, may I suggest that in the future a resolution be passed and the minutes should reflect that a resolution was passed authorizing the Authority to go into executive session. An example of such a resolution would be the following:

RESOLUTION: Introduced by Chairman Corvelli, who moved for its adoption, seconded by Board Member X--Be It Resolved by the Union County Improvement Authority that the Authority meet in private session from which the public shall be excluded, to discuss a personnel matter involving the salary and reappointment of Ann C. Lord, recording secretary of the UCLA.

Would you kindly discuss this issue with the members of the Improvement Authority so this situation can be corrected. Thank you for your courtesy and cooperation .

Very truly yours,

THEODORE J. ROMANKOW
Prosecutor of Union County

A handwritten signature in cursive script, appearing to read "Ann R. Rubin".

By: ANN R. RUBIN
Assistant Prosecutor

enclosure

c: John Paff