



# 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](mailto:lpsmc@pobox.com)*

January 16, 2009

Vita Thompson, R.M.C., Clerk  
Township of Andover  
134 Newton Sparta Road  
Newton, NJ 07860-2746

*(via e-mail only to [vtompson@andovertwp.org](mailto:vtompson@andovertwp.org))*

Dear Ms. Thompson:

I write, both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Open Government Advocacy Project, to ask two questions regarding the Finance Committee, established by § 3-28 of the Township Code, and how its meeting relate to the Senator Byron M. Baer Open Public Meetings Act (OPMA), N.J.S.A. 10:4-6, et. seq.

**Question 1: Are meetings of the Finance Committee OPMA "meetings" which require "adequate notice" to be given, public observation and participation to be allowed and minutes to be taken?**

§ 3-28 states:

The financial business of the Township shall be committed to the Finance Committee consisting of the Chief Financial Officer, the Treasurer (who may also be the Chief Financial Officer), the Township Administrator and two members of the governing body.

Accordingly, two members of the five-member Township Committee serve on the Finance Committee and meet together, along with the CFO and Treasurer to discuss Township business.

I am assuming, perhaps incorrectly, that Andover Township believes that since N.J.S.A. 40A:63-3(g) establishes that a quorum of the Township Committee is three members (i.e. a majority of five members) then it is permissible for two Township Committee members (i.e. less than a quorum) to meet together at a Finance Committee meeting without providing advance public notice or admitting the public to the meeting.

But, N.J.S.A. 10:4-8(b) does not say that a gathering of elected officials is not an OPMA "meeting" when attended by less than a quorum of members of the public body.

Rather, it says that gatherings are not OPMA meetings when “attended by less than an **effective majority** of the members of a public body” (Emphasis supplied.)

At first blush, it appears that the terms "quorum" and "effective majority" are synonymous. But, consider the following language from Riya Finnegan, LLC v. Township Council Of South Brunswick, 386 N.J.Super. 255, 260-61 (Law. Div. 2006):

At this point, this court feels compelled to address the Open Public Meetings Act. N.J.S.A. 10:4-6 to -21. Although raised at the trial in this matter, none of the parties felt that there was an issue and therefore there was no joinder.

The Board's subcommittee consists of three members of the Planning Board. The Board consists of nine members. N.J.S.A. 40:55D-23. "No action shall be taken at any meeting without a quorum being present." N.J.S.A. 40:55D-9. A quorum of a nine-member board is five members. "All action shall be taken by a majority vote of the members of the municipal agency present at the meeting." N.J.S.A. 40:55D-9. Therefore the "effective majority," the number of members needed to take action, is three. Any three members present at a meeting to consider the business of the Board would constitute an "effective majority" of the Board.

Finnegan suggests that an “effective majority” of the Andover Township Committee is two members. This is because a) the Township Committee consists of five members, b) a quorum of the Township Committee is three members and c) a voting majority of that quorum is two members.

Do you agree that two members of the Township Committee is an “effective majority”? If so, then it follows that the Finance Committee cannot hold a meeting unless it is properly announced, the public is admitted, etc.

**Question 2: Are meetings of the Finance Committee OPMA open to other members of the Township Committee?**

Suppose the following conditions:

- a. Andover Township rejects the argument, set forth above, that two members of the Township Committee is an “effective majority.”
- b. At the November 2009 general election, a Democrat challenges Committee members Alex Gilsenan and Gail Phoebus.
- c. Phoebus and the Democrat are elected, giving the Republicans a 4-1 Committee majority.
- d. At the January 2010 reorganization meeting, Phoebus and Phil Boyce, both Republicans, are assigned to serve on the Finance Committee.

My question is this: Suppose that the Democrat, who is not a members of Finance Committee, announces that he intends on attending an upcoming Finance Committee meeting. Would you:

1. Treat the Finance Committee meeting as a public meeting, since a quorum of the Township Committee was going to attend, and give “adequate notice” to the newspapers, invite the public, have minutes taken at the meeting, etc., or
2. Advise the Democrat that he is not allowed to attend the Finance Committee meeting, or alternatively, endeavor to get one of the Republican Finance Committee members not to attend, thus reducing the elected representatives in attendance to two, apparently obviating the need for public notice, etc.?

If Andover Township elects No. 1 above, then it would appear that the Township’s general policy is that Finance Committee meetings are open to other Township Committee members and that if a quorum of Township Committee decides to attend, then the Finance Committee meeting becomes a OPMA public meeting. But if this is the case, this would allow a political minority on the Township Committee to force Finance Committee meetings to be open to the public simply by attending.

Having watched local government for some time, I’ve seen many cases where the members of the minority party complain that they and the public are shut out of the decision-making process. One way the majority party shuts them out is by deliberating important matters in a subcommittee and not inviting the minority members to the subcommittee meetings. So, if subcommittee meetings are open to all members of a governing body, the minority party could turn each of these meetings into a full-blown public meeting simply by attending, and thus bringing the number of elected members present to at least a quorum of the whole governing body.

I’ve never seen the political minority in any New Jersey municipality employ this technique, which causes me to believe that Andover Township and other municipalities around the state probably adhere to No. 2 above, which is to disallow municipal governing body members from attending meetings of the body’s subcommittees of which they are not members. But this answer also makes me wonder because such a policy would seem to run afoul of N.J.S.A. 10:4-11 which makes it unlawful for a public body or an individual to “fail to invite” some of the governing body’s members “to a meeting for the purpose of circumventing the provisions of this act.”

I certainly don’t expect you to try to resolve this entire issue for me. Rather, I just would appreciate knowing what Andover Township would do if, in accordance with the suppositions listed at the beginning of this question, our hypothetical Democrat announced his intention to attend a Finance Committee meeting.

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

Sincerely,



John Paff

John H. Dorsey\*  
Fred Semrau  
Dominic DiYanni  
Carolyn McGuire  
\*Member of NJ & DC Bars

**DORSEY & SEMRAU**  
Attorneys at Law  
714 Main Street  
P.O. Box 228  
Boonton, New Jersey 07005  
973-334-1900  
Facsimile 973-334-3408

Sussex County Office:  
83 Spring Street  
Suite 104, P.O. Box 68  
Newton, NJ 07860

**WEBSITE: [WWW.DORSEYKINGSEMRAU.COM](http://WWW.DORSEYKINGSEMRAU.COM)**

**Please Respond To: Boonton Office**

February 11, 2009

John Paff, Chairman  
New Jersey Libertarian Party  
Open Public Advocacy Project  
P.O. Box 5424  
Somerset, NJ 08875-5424

Re: Township of Andover

Dear John:

This office serves as the municipal attorney for the Township of Andover and it is in that capacity I am responding to your letter of January 16, 2009 addressed to Vita Thompson regarding certain aspects of the Township's Finance Committee and the Open Public Meetings Act.

First, your letter initiated much thought and discussion. I will attempt to answer the several questions you posed in narrative form and hopefully you will find same to be responsive.

With respect to the Finance Committee, it does in fact consist of two members of the five member Township Committee and at this point in time, the meetings have not been advertised as meetings under the Open Public Meetings Act. The Finance Committee does not take any action, nor does it have any spending authority. The Committee simply reviews budgetary matters of the Township Committee. All final budget decisions, including the introduction and adoption of the budget, are discussed by the Mayor and Township Committee at open public meetings.

However, you raise an issue that was discussed in the case of Riya Finnegan v. The Township of South Brunswick, 386 N.J. Super. 255 (Law Div. 2006). The issue raised is what if in the case of Andover Township the two members who participate on the Finance Committee are two of the three members that may be at a subsequent public meeting voting on the adoption of the budget? The answer to that question, in my opinion, would be then a municipality would have an issue relating to a potential violation of the Open Public Meetings Act!

Admittedly, I don't believe many municipalities may have thought of this scenario however, now that it has been brought to my attention, I did advise the Mayor and Township Committee that in fact this matter could be an issue if the full membership of the governing body does not take action with respect to the budget. Alternatively, the matter could be addressed if

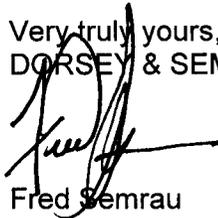
the Finance Committee were to advertise and conduct public meetings with respect to their budget review. It is my understanding that the Finance Committee will proceed by either conducting open public meetings or the Mayor and Township Committee already have been apprised that it would be inappropriate to take any action regarding the budget unless all five members of the Township Committee were to participate. Otherwise, issues such as the effective majority as raised in the Finnegan would support a potential violation of the Open Public Meetings Act.

With respect to Question 2, meetings of the Finance Committee, you raise the issue as to what the Committee would do in the event other members of the Township Committee sought to attend a Finance meeting. In my opinion, under such circumstances, the Finance Committee should not in any way preclude other members of the governing body participating since each member of the Township Committee, including the Mayor, have equal authority. Therefore, under such circumstances the meetings should be advertised and conducted in accordance with the Open Public Meetings Act.

In addition, I have spoken with a member of the Finance Committee who indicated that if other Township Committee members sought to participate and attend the meetings, then they would proceed and conduct the meeting in accordance with the Open Public Meetings Act.

I hope this answers your inquiry. Thank you for bringing this matter to my attention.

Very truly yours,  
DORSEY & SEMRAU

A handwritten signature in black ink, appearing to read "Fred Semrau", is written over the typed name below.

Fred Semrau

FCS:sdj

cc: Mayor and Township Committee  
Jayme Alfano, Township Administrator  
Vita Thompson, Township Clerk