



New Jersey Libertarian Party

Open Government Advocacy Project

John Paff, Chairman

P.O. Box 5424

Somerset, NJ 08875

Phone: 732-873-1251 - Fax: 908-325-0129

Email: lpsmc@pobox.com

April 9, 2008

Hon. Joseph Stemberger, Mayor and Members of Council
Borough of Elmer
120 S Main St
Elmer, NJ 08318 *(via email to elmernjclerk@comcast.net)*

Dear Mayor Sternberger and Council members:

I write, both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Open Government Advocacy Project.

As an initial matter, I can't find the Borough's official records request form anywhere on the Borough's Internet site. If it is there, would you please direct me to the appropriate link? If it is not there, would you consider putting a link on the main page of your site to make it easier for members of the public who wish to request public records?

Attached are: a) Res. 104-07, which authorized a Council closed session on November 7, 2007 and b) what purport to be the minutes of that closed session. I have two questions regarding these documents

First, the form of resolution that you use doesn't give the public much information on what topics are being privately discussed. For example, if the Council goes into closed session to discuss any type of contract negotiation or litigation, it appears that you would check item no. 7 on the form. Do you think that perhaps you could be a bit more descriptive and list something like "Litigation – Smith v. Borough, Docket No. SAL-1234-07" or "Negotiations – XYZ Company, regarding purchase of road salt"?

This way, the public is informed of the topics being discussed, but the Borough's negotiation position or litigation strategy is still preserved. I litigated this issue last year in Middlesex County and the judge there held¹ that that "Judge Carchman's decision clearly articulates the public policy behind the Act, i.e., **that closed session resolutions should contain as much information as is consistent with full public knowledge without doing any harm to the public interest.**" (Emphasis supplied.)

¹ My complaint and court's unpublished decision are on-line at <http://www.lpcnj.org/OGTF/Monroe.pdf>

Even though this unpublished decision from Middlesex County is not binding on courts in Salem County, would the Council be willing to abide by it, in order to provide more transparency to the members of the public who attend your meetings? If so, I recommend the form of closed session resolution used by Delanco Township in Burlington County, which is available at <http://www.lpcnj.org/OGTF/DelancoResolution.pdf>

Second, I have a few concerns with the minutes of the November 7, 2007 closed session:

- a) Why was the procedure for replacing a councilman discussed in closed session? It appears to be a general policy matter that could have been discussed in public without any harm to the Borough's interests and without invading any personal privacy concerns.
- b) What matter which is "declared to be confidential by express provision of federal or state law" was discussed? (Note that the item no. 1 on the resolution is checked off.)
- c) The minutes aren't signed by anyone, and don't include the "time" of the meeting, "the members present," "the actions taken," or the "vote of each member," all of which are required by N.J.S.A. 10:4-14.
- d) Do you think that these minutes are "reasonably comprehensible" within the meaning of the N.J.S.A. 10:4-14? All the minutes give the public is a very brief description of the topic discussed?

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 stylized, cursive flourish.

John Paff

cc. Charles J. Girard, Esq., via Fax only to 856-696-1504

The following resolution was presented:

Number 109-07

A RESOLUTION OF THE BOROUGH OF ELMER AUTHORIZING A CLOSED SESSION IN ACCORDANCE WITH THE OPEN PUBLIC MEETINGS ACT
(Open Public Meeting Act, Resolution No. ~~104-07~~ C2)

BE IT RESOLVED THAT the Mayor and Council of the Borough of Elmer have determined that a portion of the regularly scheduled meeting of the Borough Council of the Borough of Elmer will be closed to the public to enable the Borough Council to discuss and, where appropriate, take action concerning the following matters as permitted by NJS 10:4-12:

1. Matters which are declared to be confidential by express provision of federal or state law.
2. A matter involving the right to receive federal funds.
3. A matter which, if disclosed, would violate an individual's right to privacy.
4. A matter involving the terms and conditions of a collective bargaining agreement.
5. A matter involving the purchase of real property or setting bank rates or investment of public funds which, if disclosed, would adversely affect the public interest.
6. A matter involving tactics and techniques to protect the public safety and property, where disclosure might impair protection or involves investigations of possible violations of possible violations of law.
7. A matter involving pending or anticipated litigation or negotiations (or involving attorney-client privilege).
8. A matter involving personnel.
9. A matter involving the imposition of a civil penalty or the loss of a license or permit.

The minutes of the above-mentioned closed session shall be released on or before December 31, 2007.

Adopted: 11/7/07

Attest:

Beverly S. Richards
Beverly S. Richards, RMC, Borough Clerk

Herbert D. Stiles, Jr.
Herbert D. Stiles, Jr., Mayor

CLOSED MEETING MINUTES
November 7, 2007

C 2007-3

During the closed session of the November 7, 2007 meeting the following was discussed.

1. Replacement of Councilman Stemberger procedure.

Charles J. Girard, P.C.

A Professional Corporation

Charles J. Girard

Counselor at Law

Girard Building

Member Miss. Bar

825 Elmer Street

Vineland, N.J. 08360

856-696-9300

Fax 856-696-1504

April 11, 2008

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

Dear Mr. Paff:

Your letter dated April 9, 2008 to Mayor Joseph Stemberger and council members of the Borough of Elmer have been referred to me for reply.

The Borough's official records are on the Internet site at www.elmerboroughnj.com. The link can be found on the Borough Clerk's page.

On or about November 7, 2007 there was a closed session. The Borough of Elmer agrees to update its information to more clearly identify the subject of the closed session.

The form that you suggested is going to be used in updating our closed resolution session form.

In your second question there are four parts:

- a. The Borough followed the New Jersey Statutes N.J.S.A. 40; 69A-1 et seq. in choosing a replacement for the councilman.
- b. Number 1 was used because; the governing council was choosing a councilman under the correct law. All candidates were invited to said meetings.
- c. All future closed session meetings, resolutions and minutes will be signed by the Borough Clerk including the time, members present, actions taken and informal votes or no action taking would be stated.

d. It is the opinion of the undersigned that in the overview of all the action required in closed sessions “ reasonably comprehensible”.

If you have any questions please do not hesitate to contact me.

I am,

Sincerely yours,

A handwritten signature in black ink, appearing to read "Charles J. Girard". The signature is fluid and cursive, with a prominent initial "C" and a long, sweeping tail.

Charles J. Girard, Esquire

CJG/ev

cc: Mayor Joseph Stemberger

cc: Beverly S. Richards, Borough Clerk