

**UNION COUNTY
WATCHDOG ASSOCIATION**

*Shining a Light
on Government*

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August 17, 2011

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

RE: Open Public Meetings Act violation by Union County Board of Chosen Freeholders

Dear Assistant Prosecutor Rubin:

On July 28, 2011 during a regular meeting of the Union County Board of Chosen Freeholders, the freeholders voted unanimously to appoint Alfred Faella County Manager. I have not been able to obtain even one public record that would show that this decision making process was conducted in accordance with the Open Public Meetings Act.

Attached please find the following exhibits:

A. A Star-Ledger article dated July 19, 2011 excerpt: Devanney said in a statement that he has been pondering retirement for about a year.

B. An excerpt from Union County Meeting Agenda dated July 28, 2011 showing the following resolution: 2011-706 CHAIRMAN SCANLON AND THE ENTIRE BOARD: Appointing Alfred J. Faella as County Manager to serve at the pleasure of the Board of Chosen Freeholders and said services shall commence on August 1, 2011, at an annual salary of \$155,000.

C. A Star-Ledger article dated August 7, 2011, excerpt: "George has been talking about leaving for quite some time — the better part of the last few months or even a year ago," Freeholder Daniel Sullivan said. "There have been any number of conversations the freeholders had, 'What if George leaves?' Every time we had those conversations, it all came back around to Al."

D. A Westfield Leader Article dated, July 27, 2011 which has several quotes from Freeholder Chairman Mirabella including: "We have very strong internal candidates that we are going to take a look at initially," Freeholder Vice-Chairman Al Mirabella told The Westfield Leader.

E. Emails dated August 12, 2011 and August 9, 2011 from the county freeholder's clerk's office.

1. Excerpt: This email constitutes a formal and complete response to your August 8, 2011 OPRA request for "a copy of any meeting minutes which would support the statement made in a Star Ledger article published on 8/7/11, regarding discussions Freeholders had involving the County Manager position. Star Ledger quotes Freeholder Sullivan..." There are no emails to provide.

2. Excerpt: All emails and letters between the Freeholders and Alfred Faella and/or George Devanney regarding his position, 7/1/11 to date: the responsive letters are attached; there are no emails to provide. (The letters from Devanney sought to recuse him from certain county projects, they were nt in relation to the hiring of Faella).

Our Mission

The Union County Watchdog Association, Inc. is a nonpartisan, nonprofit 501(c)3 organization working on behalf of residents and taxpayers to monitor Union County government and advocate for the elimination of waste, corruption and incompetence. We believe that good government can only be achieved through a system of checks and balance - a system that includes the watchful eye of the people.

F. A PhillyBurbs.com article dated August 7, 2011 regarding the Burlington County Prosecutor's Office issuing OPMA guidelines. Prosecutor Robert Bernardi made the decision to issue guidelines after a six-week investigation into whether the Open Public Meetings Act was violated. He also addressed rolling email, which occurs when one member of the governing body or a third party contacts other members via email individually to successively discuss or gain opinions on an item of township business.

G. Bergen County Superior Assignment Court Judge Peter E. Doyne decision dated August 4, 2011, considered, among other issues, the question of public officials using private e-mails to discuss public business. Judge Doyne ultimately concluded that using personal e-mail accounts for public business "appears highly questionable" and "order[ed] counsel for [the municipality] to circulate a memorandum among all pertinent Borough employees directing they use only their public e-mail accounts, rather than private accounts, when conducting town business."

N.J.S.A.10:4-8. b. "Meeting" means and includes any gathering whether corporeal or by means of communication equipment, which is attended by, or open to, all of the members of a public body, held with the intent, on the part of the members of the body present, to discuss or act as a unit upon the specific public business of that body. Meeting does not mean or include any such gathering (1) attended by less than an effective majority of the members of a public body, or (2) attended by or open to all the members of three or more similar public bodies at a convention or similar gathering.

c. "Public business" means and includes all matters which relate in any way, directly or indirectly, to the performance of the public body's functions or the conduct of its business.

From all of this, I conclude that the Freeholder Board violated N.J.S.A. 10:4-12. There is not one public record that documents this decision making process. Rather, on July 28, 2011 during a Regular Freeholder meeting the freeholders voted unanimously to appoint Alfred Faella County Manager.

This incident shows how the public is deprived of any knowledge of the topics that the Freeholders are privately discussing with county department heads and employees.

As you are aware, the Open Public Meetings Act N.J.S.A. 10:4-17 1 empowers your office to enforce the Act. We assert that the Union County Board of Chosen Freeholders has violated the Act and ask that you investigate and take whatever enforcement action you deem appropriate.

I also respectfully request you follow the Burlington County Prosecutor in issuing guidelines on how to comply with the OPMA to all government bodies, including the Freeholder Board (Exhibit F) and bring your attention to a recent Burgen County Superior Court ruling directing officials on the use of personal email accounts, I've attached the decision (Exhibit G).

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.

Sincerely,



Tina Renna
President

Attachments

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.