PRINCETON COUNCIL MEETING
October 23, 2013

A special meeting of the Mayor and Council of Princeton was held on this date at 7:00 p.m. in the Main Meeting Room, Monument Hall, 1 Monument Drive, Princeton, NJ.

NOTICE OF MEETING

The Deputy Clerk read the following statement.

The following is an accurate statement concerning the providing of notice of this meeting and said statement shall be entered in the minutes of this meeting. Notice of this meeting as required by Sections 4a, 3d, 13 and 14 of the Open Public Meetings Act has been provided to the public in the form of a written notice. On October 21, 2013 at 5:30 p.m., said schedule was posted on the official bulletin board in the Municipal Building, transmitted to the Princeton Packet, the Trenton Times, the Town Topics, and filed with the Municipal Clerk.

ROLL CALL

The Deputy Clerk then called the roll.

Present:	Ms. Crumiller, Mr. Liverman, Mr. Miller, Mr. Simon, Ms. Bulter (7:20p.m.), Ms. Howard (8:20p.m.) and Mayor Lempert. (8:00p.m.)
Absent:	None.
Also Present:	Mr. Bruschi

CLOSED SESSION

A motion to enter into closed session was made by Ms. Crumiller, seconded by Mr. Liverman and carried unanimously by those present.

13-282 CLOSED SESSION RESOLUTION

RESOLUTION
TO GO INTO CLOSED SESSION
(Open Public Meetings Act Sec.3)

BE IT RESOLVED by the Mayor and Council of Princeton:

1. This body will now convene into a closed session that will be limited only to consideration of an item or items with respect to which the public may be excluded pursuant to section 7B of the Open Public Meetings Act.

2. The general nature of the subject or subjects to be discussed in said session is as follows:

Princeton University Negotiations

3. Stated as precisely as presently possible, the following are the time when and the circumstances under which the discussion conducted at said session can be disclosed to the public:

Within 90 days or upon settlement of litigation, if applicable

Kalisha Crawford, Esq., was present during this closed session to discuss with Council: Princeton University Negotiations.

At 8:10 p.m. Council returned to open session.

Mayor Lempert opened the meeting asking for public comment. Kate Warren stated that she wished all Boards and Commissions had been invited to attend the open session presentation being given tonight concerning open public meetings. Mayor Lempert responded that the presentation will be posted on the website.

Mayor Lempert introduced William J. Kearns, Jr., General Counsel to the New Jersey League of Municipalities.

Mr. Kearns presented a power point program (attached) to Council entitled: Public Meetings, Ethics Pitfalls, Email & Social Media Dangers and Civility. He discussed with Council procedures concerning open public meetings and what groups are covered, and what constitutes a meeting. He also reviewed procedures concerning emails. He continued the presentation with procedures and guidelines for going into closed session. He also noted that closed session minutes should contain the time, date, place, who was present and the item or items to be discussed.

He concluded his presentation discussing civility during meetings and social media issues.

Mayor and Council thanked Mr. Kearns for his presentation.

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2. The general nature of the subject or subjects to be discussed in said session is as follows:

   Personnel: Professional Appointment

3. Stated as precisely as presently possible, the following are the time when and the circumstances under which the discussion conducted at said session can be disclosed to the public:

   Within 90 days or upon settlement of litigation, if applicable

Mayor and Council and Administrator Bruschi discussed Personnel: Professional Appointment.

There being no further business the meeting was adjourned at 10:00 p.m.

Kathleen Brzezynski
Deputy Clerk

PRINCETON
NEW JERSEY

Public Meetings
Ethics Pitfalls
E-mail & Social Media Dangers
Civility

~~~~~

October 23, 2013

We do live in a fishbowl ……..…
…… and EVERYBODY is watching!!
~~~~~

Open Public Meetings

Senator Byron M. Baer
Open Public Meetings Act
N.J.S.A. 10:4-6 *et seq*

Open Public Meetings

Philosophy: governmental bodies should conduct their business in public. "Let the sun shine in."

Open Public Meetings

What Groups are Covered

- "Public body" means a commission, authority, board, council, committee or any other group of two or more person organized under the laws of this State, and
- collectively empowered as a voting body to perform a public governmental function affecting the rights, duties, obligations, privileges, benefits, or other legal relations of any person, or
- collectively authorized to spend public funds

Open Public Meetings

Who is not covered

- The judicial branch of the government,
- any grand or petit jury,
- any parole board or agency,
- the State Commission of Investigation,
- the Apportionment Commission, or
- any political party committee

Open Public Meetings

What constitutes a meeting?

- Any gathering whether corporeal or by communication equipment, which is
  - attended by, or open to, all of the members of a public body,
  - held with the intent to discuss or act as a unit on the public business of that body.
- Meeting does not mean a gathering
  - attended by less than an effective majority of the members, or
  - attended by or open to all the members of three or more similar public bodies at a convention or similar gathering.

Open Public Meetings

What constitutes a meeting?

- Telephone Conference Call
- E-Mail exchange can constitute a meeting
  - Burlington County Prosecutor to the Evesham Council
  - Sent to all municipal attorneys in the County
  - Sample policy on NJLM website
- Substance or Procedural or transmitting information

Open Public Meetings

Failure to invite some members

- It is improper to attempt to evade the requirements of the law by failing to invite some of the members to attend a meeting for the purpose of circumventing the provisions of the act.

Open Public Meetings

How about a political caucus?
What about being at the same ball game?

- "Typical partisan caucus meetings and chance encounters of members of public bodies are neither covered by the provisions of this act, nor are they intended to be so covered."

N.J.S.A. 10:4-7

Open Public Meetings

What is "public business?"

- "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.

Open Public Meetings

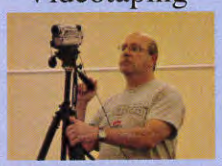
Public Comment

- All meetings of public bodies shall be open to the public at all times.
- Nothing limits the discretion of a public body to permit, prohibit or regulate the active participation of the public at any meeting.
- A **municipal governing body** shall be required to set aside a portion of every meeting **of the municipal governing body**, the length of the portion to be determined by the municipal governing body, for public comment on any governmental issue that a member of the public feels may be of concern to the residents of the municipality.

N.J.S.A. 10:4-12

Open Public Meetings

Videotaping



- Videotaping is permitted

Tarus v Borough of Pine Hill, NJ Supreme Court, 2005

- Council may establish reasonable restrictions to prevent disruption of the meeting, but those restrictions cannot effectively prohibit the videotaping.

Open Public Meetings

Meetings Closed to the Public

- Meetings may be closed to the public only for specific matters authorized by statute.
- A **resolution** must be adopted to close the meeting to the public **specifying the reason** for the closed meeting.
- The resolution must specify when the matters may be disclosed to the public.

Open Public Meetings

Closed Meeting Reason No. 1

- To discuss any matter which, by express provision of Federal law or State statute or rule of court shall be rendered confidential or excluded from the provisions of subsection a. of this section.

Open Public Meetings

Closed Meeting Reason No. 2

- To discuss any matter in which the release of information would impair a right to receive funds from the Government of the United States.

Open Public Meetings

Closed Meeting Reason No. 3

- To discuss any material
  - the disclosure of which constitutes an unwarranted invasion of individual privacy …
  - educational, training, social service, medical, health, custodial, child protection, rehabilitation, legal defense, welfare, housing, relocation, insurance and similar program … operated by a public body pertaining to any specific individual …
  - including but not limited to information relative to the individual's personal and family circumstances, and any …
  - admission, discharge, treatment, progress or condition of any individual, unless the individual concerned (or, in the case of a minor or incompetent, his guardian) shall request in writing that the same be disclosed publicly.

Open Public Meetings

Closed Meeting Reason No. 4

- To discuss any collective bargaining agreement, or the terms and conditions which are proposed for inclusion in any collective bargaining agreement, including the negotiation of the terms and conditions thereof with employees or representatives of employees of the public body.

Open Public Meetings

Closed Meeting Reason No. 5

- To discuss any matter involving the purchase, lease or acquisition of real property with public funds, the setting of banking rates or investment of public funds, where it could adversely affect the public interest if discussion of such matters were disclosed.

Open Public Meetings

Closed Meeting Reason No. 6

- To discuss any tactics and techniques utilized in protecting the safety and property of the public, provided that their disclosure could impair such protection. Any investigations of violations or possible violations of the law.

Open Public Meetings

Closed Meeting Reason No. 7

- To discuss any pending or anticipated litigation or contract negotiation *other than a collective bargaining agreement* in which the public body is, or may become a party and any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer.

Open Public Meetings

Closed Meeting Reason No. 8

- To discuss any matter involving the
  - employment, appointment, termination of employment, terms and conditions of employment,
  - evaluation of the performance of, promotion or
  - disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the public body,
  - unless all the individual employees or appointees whose rights could be adversely affected request in writing that such matter or matters be discussed at a public meeting.

Open Public Meetings

Closed Meeting Reason No. 9

- To discuss any deliberations of a public body occurring after a public hearing that may result in the imposition of a specific civil penalty upon the responding party or the suspension or loss of a license or permit belonging to the responding party as a result of an act or omission for which the responding party bears responsibility.

Open Public Meetings

Can a member be excluded?

- A member of the public body who has brought the litigation against the public body may not participate in the closed session where the litigation and claim are to be discussed.

Scotch Plains-Fanwood Board of Education v. Syvertsen, 251 N.J. Super. 566 (App. Div. 1991)

Ethics and Conflicts of Interest

Ethics Laws

- Establish minimum standards of conduct.
- Apply to public sector officials and employees, including higher education
- May impact on private sector as well

Ethics and Conflicts of Interest

Standards of Conduct

- Prohibit the official or employee and family members from using or attempting to use his/her position to secure unwarranted privileges or advantages personally or for others

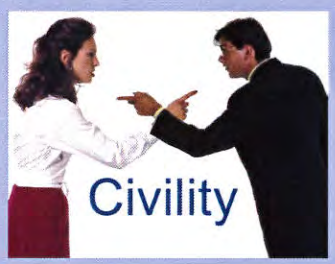
Ethics and Conflicts of Interest

Standards of Conduct

Insider Trading –

- Bars any official or employee - and family members - from using any information, not generally available to the members of the public, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated

Choose Civility



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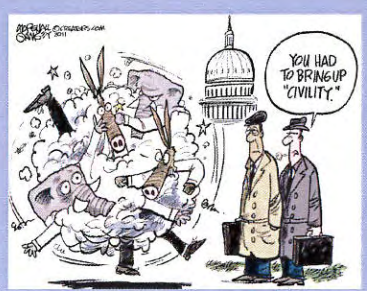


Choose Civility

Civility? What's that?

- Civil discussions with colleagues
- Civil discussions with the public
- Civil discussions with staff and employees
- Incivility = Incivility

Choose Civility

Reacting to Audience Incivility

- Citizen crudely insulting Mayor
- Citizen "rolling eyes" to express displeasure
- How to defuse the situation

Choose Civility

Hostility and Safety

- Citizens bring their complaints to the Council meetings and want to know that they are heard.
- Citizens who feel that they have been treated unfairly can exhibit hostility.
- Sometimes citizens are hostile because of the topic or just because they are angry or having a bad day
- If not handled well, the hostility can turn into violence

Choose Civility

Hostility and Safety

Choose Civility

Hostility and Safety

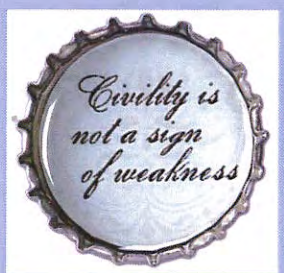
- Panama City, Florida (December 14, 2010)
  - Citizen upset comes to Board of Education meeting, fires at Board members, fortunately only the gunman was killed.
- Kirkwood, Missouri (February 7, 2008)
  - Citizen upset comes to Council meeting, kills five, including two council members, Public Works Director, two Police officers, seriously wounds Mayor
- Clarksville, Tennessee (October 4, 2007)
  - Barber shop owner, upset at zoning variance being denied, approaches Council, says "you've put me out of business," draws gun and commits suicide.

Choose Civility

Hostility and Safety

- Suwanee, Georgia (April 10, 2013)
  - Man in foreclosed home, about to be evicted, calls in a false heart attack report. Firefighters respond with truck and ambulance. He takes 5 firefighters hostage. Demands that utility and cable services be turned back on. SWAT team kills the hostage-taker.
- Ross Township, Pennsylvania (August 5, 2013)
  - Rockne Newell, evicted from his home by court order due to unsanitary conditions and code violations blasted his way into a Board of Supervisors meeting killing the zoning officer and two residents at the meeting.

Choose Civility

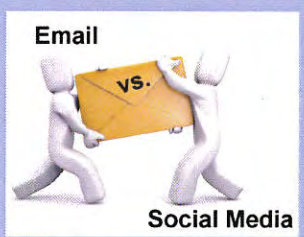


CIVILITY

ALL DAY - EVERY DAY

NJ League of Municipalities Educational Foundation

eMail & Social Media Issues



Fun and Dangerous

ELECTRONIC COMMUNICATIONS

E-Mail Issues

- E-Mail is a document
- E-Mail on public business is a public record
- Even on a personal computer
- E-Mail is really not private
- E-Mail is discoverable
- E-Mail can come back to haunt you
- E-Mail can be embarrassing

ELECTRONIC COMMUNICATIONS

E-Mail Issues

"The estranged wife of a millionaire developer found slain this month in his home fantasized in an e-mail last year about "pummeling him to death," but her lawyer said Tuesday she was only venting her frustrations over her husband's extensive legal and other troubles."

Stamford, CT
Associated Press, April 19, 2006

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E-Mail Issues

The President of the University of Tennessee at Knoxville resigned after intimate e-mail messages between the President and an Administrator were published in the local newspaper.

June, 2001

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E-Mail Issues

Legislator thinks that his e-mail messages to a female lobbyist containing explicit sexual messages are "private" ..... And then ..... The New York Post publishes almost 300 of the very explicit messages on their website.

March, 2013

ELECTRONIC COMMUNICATIONS

E-Mail Issues

An attorney representing Eli Lilly accidently sent an e-mail, intended for another lawyer for the company to a reporter with the same last name. The e-mail contained information on confidential settlement negotiations between Eli Lilly and the US Justice Department on an investigation into Eli Lilly's marketing of a drug. The story of the negotiations was published in the *New York Times*.

February, 2008

ELECTRONIC COMMUNICATIONS

E-Mail Issues

The Burlington County Prosecutor found that e-mail discussions by Council members constituted a violation of the NJ Open Public Meetings Act. He notified every municipality in the county to avoid substantive discussions by e-mail. The municipal council then adopted a formal policy on e-mail.

August, 2011

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E-Mail Issues

"But it is on my personal computer."

Government Records Council Case 2005-127, decided December 8, 2005 - - held that e-mail on the Mayor's personal computer was a public record and must be produced in response to an OPRA request. The Custodian was directed to produce the e-mail messages.

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Good for a laugh – and not much more

John Jones would like to recall the previous e-mail message entitled "This guy is a real jerk"

Please delete the e-mail and destroy any printed copies.

If it was forwarded, please recall the forwarded messages.

ELECTRONIC COMMUNICATIONS

Tip #1

Do not compose – and especially DO NOT SEND an e-mail when you are angry.

ELECTRONIC COMMUNICATIONS

Tip #2

Check and then check again the name and address of your intended recipient.

And then check it again before you SEND.

ELECTRONIC COMMUNICATIONS

Tip #3

Verify the attachment to make sure that it is the appropriate and correct item before you attach it.

To avoid errors, never attach something named "Document.pdf" or "Document.doc" or "Scan478897656879" – make sure your documents are named so that you can easily identify the attachment.

ELECTRONIC COMMUNICATIONS

Tip #4

Do not eMail inside jokes or use derogatory nicknames to reference others, whether officials, co-employees, citizens, consultants.

Assume that your eMail will be read by the very person that you are referencing or about whom you are making the joke.

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Tip #5

After composing your e-mail, save it as a draft and go back and re-read it a half-hour later. Then remember all of the other rules as you edit it and before you send it.

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Do you Tweet?

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twitter

- Twitter is a way to send short messages – not more than 140 characters – on the author's Twitter page that can be read by any of the author's followers. Those followers can post responses.
- Once sent, the messages can be re-sent and distributed to an ever-increasing number of people.
- Messages cannot be recalled.
- The Library of Congress has and is archiving ALL Twitter messages ever sent.

ELECTRONIC COMMUNICATIONS

twitter

Some statistics as of April 2, 2013

- Twitter is 7 years old

ELECTRONIC COMMUNICATIONS

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ELECTRONIC COMMUNICATIONS

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ELECTRONIC COMMUNICATIONS

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ELECTRONIC COMMUNICATIONS

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ELECTRONIC COMMUNICATIONS

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- 55% of users are female
- 4% are age 3 to 12 – 4% are over 65

ELECTRONIC COMMUNICATIONS

Tweet, tweet = no more job

An applicant for a job with Cisco, posted a tweet that said
Cisco just offered me a job! Now I have to weigh the utility of a fatty paycheck against the daily commute to San Jose and hating the work.
An employee at Cisco saw the Tweet, and tweeted back:
Who is the hiring manager. I'm sure they would love to know that you will hate the work. We here at Cisco are versed in the web.
The job applicant later posted an apology to Cisco.

Chicago Tribune – March 26, 2009

ELECTRONIC COMMUNICATIONS

Twitter mistakes come back to haunt people

Former Congressman Anthony Weiner (New York) sent "inappropriate" twitter messages with photo attachments to a number of women. The twitter messages were posted and then forwarded by others.

- He claimed that his Twitter account was "hacked" - He Lied.
- He was (a) careless (b) stupid (c) failed to understand the internet.
- His political career came to an abrupt end –
- So it was thought ..... but tried a comeback – and lost

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Be careful what you Tweet

Don't think your tweets are private. Assume that they will be seen by the person that you LEAST want to see them.

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facebook

Facebook helps you connect and share with the people in your life.

ELECTRONIC COMMUNICATIONS

facebook

- Available to anyone over 13 with an e-mail address
- Profiles of the user
- Text messages
- Photographs
- Available to almost anyone
- Shows up in GOOGLE searches

ELECTRONIC COMMUNICATIONS

facebook

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ELECTRONIC COMMUNICATIONS

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ELECTRONIC COMMUNICATIONS

facebook

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- **55% of users are female**
- **Half of active users log on every day**
- **Average user has 130 "friends"**
- **Users spend over 700 BILLION minutes per month on Facebook**

Social Media and Litigation

- While your case is active, do not use social media.
- Don't. Period. This includes everything from Facebook, to Twitter, to Instagram, to blogging — even if you're "anonymous" or doing so under a pseudonym.
- The opposing side will be able to find anything you post and will use it against you. You should pretend that anything you post will end up on the front page of the newspaper.
- Finally, don't ever send confidential information over social media. Social media is never confidential!

ELECTRONIC COMMUNICATIONS

In this day of wide dissemination of thoughts and messages through transmissions which are vulnerable to interception and readable by unintended parties, armed with software, spyware, viruses and cookies spreading capacity; the concept of internet privacy is a fallacy upon which no one should rely.

New York v. Klapper, (N.Y. City Crim. Ct. Apr. 28, 2010)

? ? ? Questions ? ? ?

Questions are guaranteed in life; Answers aren't.

William J. Kearns, Jr.
General Counsel
New Jersey League of Municipalities

Past President
International Municipal Lawyers Association

Member
Governor's Task Force on the Local Government Ethics Law

Presentation Materials © 2013 ~~~

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