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Edward J. DeFazio, Prosecutor
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(via regular mail and Fax to 201-795-3365)

RE: Open Public Meetings Act

Dear Prosecutor DeFazio:

Enclosed is an article entitled "Time to get the schools in shape!" that appeared in the February 12, 2006 Hudson Reporter. According to the article, Hoboken Mayor David Roberts recently hosted an "invitation-only education initiative" that was attended by "almost every Hoboken elected official from the City Council and the Board of Education." The media and public, however, were excluded. According to Hoboken's City Attorney Joseph Sherman, "the meeting did not violate the [Open Public Meetings Act because it] was 'a social gathering' where no action was taken, and the focus of the meeting was to allow people to talk in general terms about 'education in Hoboken in the 21st century.'"

I respectfully disagree with Mr. Sherman and assert that this private meeting violated the Open Public Meetings Act (OPMA). Specifically, I take exception to both premises upon which Mr. Sherman bases his contrary conclusion:

1. The meeting was a "social gathering" to which the OPMA does not apply.
2. The OPMA does not apply to gatherings at which public issues are discussed but no action is taken.

"SOCIAL GATHERINGS" SUCH AS THE PRESENT ONE ARE INCLUDED WITHIN THE OPMA'S SCOPE

Nothing in the OPMA excludes "social gatherings" of public officials from the Act's scope. Rather, "meetings" are defined by the OPMA as "any gathering . . . 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." N.J.S.A. 10:4-8(b). Since this "gathering" was a) open to the memberships of the City Council and Board of Education, and was b) held with the intent by those present to discuss "education in Hoboken in the 21st century," it was a "meeting" under the OPMA to which the public and media were entitled to attend.

Mr. Sherman, apparently, is mistakenly relying upon the following language contained in N.J.S.A. 10:4-7

The Legislature, therefore, declares that . . . to be covered by the provisions of this Act . . . a meeting must be open to all the public body's members, and the members present must intend to discuss or act on the public body's business; and therefore, 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. (Emphasis supplied).

A planned meeting to which members of public bodies are invited to discuss public matters cannot be considered a "chance encounter." Accordingly, the above provision does not excuse noncompliance with the OPMA.

MEETINGS AT WHICH PUBLIC BUSINESS IS DISCUSSED ARE WITHIN THE OPMA'S SCOPE EVEN IF NO ACTION IS TAKEN.

OPMA's legislative findings state that

The Legislature finds and declares that the right of the public to be present at **all meetings** of public bodies, and to witness **in full detail all phases of the deliberation, policy formulation, and decision making of public bodies**, is vital to the enhancement and proper functioning of the democratic process; that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society, and hereby declares it to be the public policy of this State to insure the right of its citizens to have adequate advance notice of and the right to attend **all meetings** of public bodies at which **any business affecting the public is discussed or acted upon in any way** except only in those circumstances where otherwise the public interest would be clearly endangered or the personal privacy or guaranteed rights of individuals would be clearly in danger of unwarranted invasion.

(N.J.S.A. 10:4-7 Emphasis added.)

The Open Public Meetings Act is in keeping with New Jersey's strong policy "favoring public involvement in almost every aspect of government." Polillo v. Deane, 74 N.J. 562, 569 (1977). The Act is to be liberally construed, N.J.S.A. 10:4-21, and

"strict adherence to the letter of the law is required in considering whether a violation of the act has occurred." Id. at 578.

As stated above, "meetings" are defined by the Act as "any gathering . . . 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." N.J.S.A. 10:4-8(b). (emphasis supplied). Thus, the fact that no action was taken by either the City Council or Board of Education does exempt this gathering from the OPMA's scope.

CONCLUSION

I ask that your office investigate this matter and take appropriate action against the parties involved.

Thank you for your attention to this matter.

Sincerely,

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

John Paff

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February 12, 2006

Time to get the schools in shape!

Mayor discusses education initiative at private meeting; former state commissioner to be tapped to analyze district

*By Tom Jennemann
Reporter staff writer*

Mayor David Roberts unveiled his new education initiative last week, which includes negotiating a consulting contract with the state's former commissioner of education to have him address the tough challenges facing the district.

Over the past decade, Hoboken has become one of the most desirable cities in New Jersey to live and work in, but many believe that its urban school district, with its below-average test scores (see story, p. 3), fails to keep young families here. The situation has improved in the last ten years due to the choices allowed by the two charter schools and by improvements in the six regular schools. However, some feel there is a lot of work still to do.

The district faces unique challenges, and Mayor Roberts led a private discussion among local officials last week "not to criticize and look where we might have stumbled in the past, but to look at the great opportunities that the future holds."

Roberts, who has three children, said Thursday that improving education in the mile-square city is one his top priorities during his second term.

"My prediction is that in five years we are no longer going to see families leave Hoboken because they don't have confidence [in the city's public schools]," Roberts said. "In fact, I envision families moving here just so they can enroll their sons and daughters in what are going to be the best public schools in the state."

A new partnership

When it comes to New Jersey educational theory, there are few bigger names than William L. Librera, who was the state's commissioner of education during Gov. James McGreevey's administration.

The board, with Roberts' full support, is currently in negotiations to bring in Librera as a consultant, who will help develop a new model for structuring the schools to promote better student performance.

Last year, Rutgers University launched a new institute, headed by Librera, to help schools analyze standardized test scores and improve teaching. The Rutgers Institute for Improving Student Achievement was created to help local school districts partner with university scholars conducting research on kindergarten through 12th grade education.

"He is going to assist the board in developing revolutionary methods to ensure that our children are going to have the best education possible," Roberts said.

According to Board of Education President Carmelo Garcia, the board will likely vote on a consulting contract for Rutgers and Librera at its next regular meeting on Feb. 28 at 7 p.m.

Garcia added that they are still negotiating the terms of the contract. He also said Librera will be at the board's caucus meeting this Monday at 6 p.m. where parents and members of the public can meet him.

Roberts' private forum includes political opponents

Roberts' education initiative was launched Tuesday night at an invitation-only event for about 40 community leaders who have a stake in the city's educational system.

The meeting, which was closed to the press, was held at the house of Stevens Institute of Technology's President Harold Raveche. Roberts said that the press was not invited to the meeting so that it would not be politicized. According to Roberts, attendees included almost every Hoboken elected official from the City Council and the Board of Education, district administrations, city educators, and local business and civic leaders.

Even though there was more than a quorum of both the City Council and Board of Education, the city's attorney, Joseph Sherman, said that the meeting did not violate the state's Sunshine Law. Sherman said that the event was "a social gathering" where no action was taken, and the focus of the meeting was to allow people to talk in general terms about "education in Hoboken in the 21st century."

Also invited were Roberts' political opponents, like former Councilman Tony Soares, Beth Mason - who was the campaign manager for former Mayoral Candidate Carol Marsh - and Theresa Minutillo, who will be challenging Roberts' ticket in this year's school board election. While some of Roberts' critics did attend the meeting, at least one - Minutillo - said that she is worried that the mayor's initiative could be a publicity stunt that was launched to coincide with the upcoming Board of Education elections.

Roberts said that Librera, who attended the meeting, gave a brief introduction, but mostly sat and listened to what everyone had to say about the state of public school education in Hoboken.

The mayor called it the "most substantial" night for Hoboken education since he hosted a public charter school forum during Mayor Anthony Russo's first term in 1995. He added that the purpose of the meeting was not to place blame, but start the process of looking forward.

Hoboken's unique challenges

Roberts added that he understands Hoboken's public school district faces its share of challenges.

First, the makeup of the district's student body does not match the city's demographics. Over 70 percent of its children are eligible for free or reduced lunch, which sharply contrasts with the fact that Hoboken has a large affluent population.

Thus, in a wealthy city full of young professionals who work in New York, it is mainly the poorer families in the city who are using the public schools. Many of the city's new professionals don't have children yet, and some send their children to private schools. Due to the rise in housing costs, Hoboken has lost some of its lower-income families, and only the wealthy can afford to move into town.

In 1985 the school district had 4,400 students. But this year, only slightly more than 2,000 are enrolled in kindergarten through 12th grade. The challenge is for school officials to overcome the perception that the public schools are underperforming.

"We want to grow the Hoboken School District and in five years have it reflect our city's demographics," Roberts said. "[Librera] has the insight and knowledge to help us figure out where we want to be in three years, and where we want to be 10 years. He has the expertise to help us get there."

Garcia added that Hoboken's schools are in a transition. Currently, Hoboken is a "special needs" Abbott District, a designation reserved for the state's poorest school districts. But Garcia said he realizes the city won't be an Abbott District forever and that the city can no longer be content competing with only the other Abbott Districts. "We can't accept being just mediocre, we have to be great," Garcia said. "We're ready to go to the next level and not just compete with the Abbotts, but to compete with the most respected and revered districts in the state."

Succession plan

The schools will face other challenges in the next few years. Some high-profile administrators are scheduled to retire. Superintendent of Schools Patrick Gagliardi, who is also currently serving as principal of Hoboken High School, will retire effective two years from last September. The Board of Education voted to buy out his contract late last year.

Also, there will be an opening for a principal of the Brandt Middle School in the next year, when Gerry Kiely leaves.

Additionally, there will be an opening for the district's business administrator, which is an especially critical position considering that Hoboken has the county's highest per pupil cost and a nearly \$50 million budget. According to Roberts, Librera, if hired as a consultant, can help develop a succession plan to find the most qualified candidates.

A public process

Roberts said that he wants to make the process of improving the schools open to the public, although Tuesday's event was not.

Roberts said that in the coming weeks he will schedule a number of public workshops where members of the public can tell their ideas to the Board of Education and Librera. Roberts added that public participation will be a critical part of his initiative, just as it was when the city rewrote its master plan two years ago.

Still including Stevens

Roberts said that another part of his education initiative is to bolster the partnership between Stevens Institute of Technology and the Hoboken public schools. With the support of Roberts, Raveche, and Gagliardi, a number of successful programs have been undertaken to bring technology-infused curricula into the schools.

One example of where the Hoboken and Stevens partnership has reaped results is the Hoboken Summer Institute. For the past three summers, Stevens has picked up the cost of a two-week long workshop where professors from the schools instruct Hoboken teachers on how to best use technology and the Internet in the classroom.