April 27, 2020

To:
Board of Trustees
Charter Township of Oakland

Michael Bailey – Supervisor
Karen Reilly – Clerk
Jeanne Langlois – Treasurer
Frank Ferriolo – Trustee
Robin Buxar – Trustee
Lana Mangiapane – Trustee
John Giannangeli – Trustee

Bcc: Residents (approx. 300)

From: Bob Yager – Editor – Oakland Township Sentinel

Subject: Open Meetings Act Compliance

My request is for the Board to take a serious close look at your degree of compliance with the Open Meetings Act and

1 - Repeat a recent decision in open session that was made in closed session

2 - Take actions in your by-laws designed to emphasize and better ensure compliance, before a largely new-member Board takes over the majority in November.

A place to start would be to review your recent (February) rejection of an employment application for a full-time firefighter paramedic. First some background thoughts and facts.

I have come to believe that the Michigan Open Meetings Act, Public Act 267 of 1976 may be the best, but least understood, tool that we residents and you Board members have to maximize the chances of good decisions by our Board and to minimize bad decisions and hopefully completely avoid disastrous decisions.

If you review past decisions that you personally consider to be poor, perhaps reaching back even to a time before you were a board member, I believe you will

agree that there was some significant degree of deliberation going on in private out of the public view. This private deliberation leads to two problems

1. The public and Board has little to no opportunity to correct erroneous "facts" held by Board members.
2. The public cannot witness errors in logic or cause-effect thinking and call these errors to the Board's attention.

The State Legislature sought to remedy the problems caused by secret deliberations with the current law Public Act 267 of 1976 http://legislature.mi.gov/doc.aspx?mcl-Act-267-of-1976, The Open Meetings Act.

I believe that our Board would benefit from a formal review of this law especially as it relates to your closed session decision in February to reject a candidate for full-time firefighter recommended by fire department management.

The first problem was non-compliance with a clear provision of the act. A closed session was held under conditions not allowed by the Act.

"15.268 Closed sessions; permissible purposes.

Sec. 8.

(I deleted (a) through 9F)

(f) To review and consider the contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, except as otherwise provided in this subdivision, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act. This subdivision does not apply to a public office described in subdivision (j)."

The application was reviewed in private but not at the request of the applicant. Re-enacting this decision can heal this violation and inform the public of your thinking.

Soon, some of you will leave the Board and be residents only again. When you return to this side of the podium, unless something changes, you will probably be surprised at how foggy the glass window is through which you will now view the

Board. It is almost like a one-way mirror used for police line-ups. You have seven months to replace it with transparent glass.

Those of you who will remain on the Board need to consider how much damage, in terms of bad decisions, new Board members can do if they decide to deliberate behind the scenes and come to a meeting united with a decision already made. The term "we have four votes!" may take on a whole new meaning.

In my experience, people, including possibly some Board members, have an incorrect view of what this act requires. Some see it as only requiring the Board to open the doors to its regularly scheduled meetings. Based on past discussions with residents, many believe that decisions can, are, and should be made behind the scenes and that that process is legal and OK. The idea of deliberations being required in public baffles many. This is because they witness very minimal public deliberations on many important issues and do not experience open deliberation / decision-making in the private sector. They see the Board meeting in some cases as a report-back to the public on the secret deliberations.

I think Board members tend to see the Act mostly as annoying. It is likely uncomfortable to say in public what needs saying on many issues. The more you say, the more likely the public will comment on it, or the more you risk offending a fellow Board member. I believe these comments can be uncomfortable for the Board, especially since you allow too many personal attacks on yourselves rather than restrict negative public comment to criticism of ideas. Nevertheless these honest discussions in the open are necessary if you are to make good decisions.

The purpose of the act is summarized in the Attorney General's Open Meetings Act Handbook https://www.michigan.gov/documents/ag/OMA_handbook_287134_7.pdf om the first page:

OPEN MEETINGS ACT

THE BASICS

The Act – the Open Meetings Act (OMA) is 1976 PA 267, MCL 15.261 through 15.275. The OMA took effect January 1, 1977. In enacting the OMA, the Legislature promoted a new era in governmental accountability and fostered openness in government to enhance responsible decision making. (1)

Nothing in the OMA prohibits a public body from adopting an ordinance, resolution, rule, or charter provision that requires a greater degree of openness relative to public body meetings than the standards provided for in the OMA.

Footnote (1) refers to the case - Booth Newspapers vs. University of Michigan

https://law.justia.com/cases/michigan/supreme-court/1993/93246-6.html

where the Michigan Supreme Court summarized the state legislature's intent and the laws purpose as follows in their written decision in favor of Booth Newspapers.

Here is what the Michigan Supreme Court said:

"A. OPEN MEETINGS ACT

1. THE LEGISLATIVE INTENT

Courts are bound to discover and to apply the Legislature's intent, when interpreting statutory mandates. In re Certified Question, 433 Mich 710, 722; 449 NW2d 660 (1989). The legislative intent questioned in the instant case concerns the degree of accessibility the Legislature intended to afford the general public in observing the decision-making processes of public bodies.

During the late 1960s, Michigan's Constitution and a patchwork of statutes required accountability and openness in government.[10] In 1968, the Legislature directly addressed this issue by enacting an open meetings statute applicable to most public bodies. 1968 PA 261. The statute required only that public entities conduct final votes on certain subjects at meetings open to the public. Consequently, all other decisions and deliberations by public bodies could lawfully be held in closed sessions. Most importantly, because the 1968 statute failed to impose an enforcement mechanism and penalties to deter noncompliance, nothing prevented the wholesale evasion of the act's provisions. See 1970 CL 15.251-15.253. In 1973, the Michigan Senate established the Special Senate Study Committee on Political Ethics to study a variety of topics, including the 1968 statute. See Senate Resolution No. 7, 1973 Journal of the Senate 36-37. The committee concluded that revisions to the open meetings law were necessary. It stated:

****222 "The fact that only the meetings, or parts of meetings, at which votes are actually taken are considered public effectively insulates members of these bodies from public pressure. "Since final decisions of a public body are the only items that must be made public, nothing in Michigan law prevents members of any public body, even including school boards, from discussing a proposal, adjourning to an executive session where members can agree privately on the action to be taken and then reconvene the `public' meeting for the one or two***

minutes required to formally vote on their privately-arranged agreement. Actually, under existing law it is really not necessary for a public body in Michigan to go through even this semblance of openness if it doesn't want to." [Osmon, Sunshine or shadows: One state's decision, 1977 Det Col L R 613, 620, n 54, quoting Preliminary Final Report 10-11 (August, 1973).]

To rectify the ineffectiveness of the 1968 statute, legislators introduced bills to comprehensively revise and substantially improve the law. The current Open Meetings Act resulted from these legislative efforts.

2. THE OMA'S PURPOSE

Yet another fundamental rule of statutory construction is to examine a statute's purpose as evidenced by the Legislature. In re Certified Question, supra at 722. In the instant case, the OMA's legislative purposes were to remedy the ineffectiveness of the 1968 statute and to promote a new era in governmental accountability. Legislators hailed the act as "a major step forward in opening the political process to public scrutiny." 1976 Journal of the House 2242 (June 24, 1976, remarks of *223 Representative Wolpe).[11] During this period, lawmakers perceived openness in government as a means of promoting responsible decision making. Moreover, it also provided a way to educate the general public about policy decisions and issues. It fostered belief in the efficacy of the system. Legal commentators noted that "[o]pen government is believed to serve as both a light and disinfectant in exposing potential abuse and misuse of power. The deliberation of public policy in the public forum is an important check and balance on self-government."[12] The prodisclosure nature of the OMA prompted one of its sponsors to describe the law, prior to enactment, as "a strong bill now which provides very limited closed meetings" and "very tight, limited exceptions...." See 1976 Journal of the House 2242 (June 24, 1976, remarks of Representative Hollister). To further the OMA's legislative purposes, the Court of Appeals has historically interpreted the statute broadly, while strictly construing its exemptions and imposing on public bodies the burden of proving that an exemption exists.[13]

Another common misconception, in my opinion, is that to be classified as a “decision”, a formal vote is required. This perceived “loophole” can be used to discuss something secretly, take no formal vote, but, “wink-wink”, know what the consensus is and act on it. In the case above the Michigan Supreme Court debunked that idea. The Handbook on page 7 says this and refers to the case above

The OMA does not contain a "voting requirement" or any form of "formal voting requirement." A "consensus building process" that equates to decision-making would fall under the act.[26] For example, where board members use telephone calls or sub-quorum meetings to achieve the same intercommunication that could have been achieved in a full board or commission meeting, the members' conduct is susceptible to "round-the-horn" decision-making, which achieves the same effect as if the entire board had met publicly and formally cast its votes. A "round-the-horn" process violates the OMA.[27]

Please give my suggestions serious consideration