

Tom Donovan  
Assistant District Attorney  
Museum Place  
Salem, Massachusetts 01970

February 7, 2003

Dear Assistant District Attorney Donovan,

The Salem News believes the Hamilton-Wenham Regional School District Committee repeatedly violated state open meeting laws in 2002.

Enclosed are the records that prove it: the minutes from all of the Committee's executive and open sessions in 2002, and our brief explanatory summaries attached to each set of minutes.

In general, the minutes show that the Committee gave the public insufficient reason for holding the executive sessions, failed to take roll call votes within the sessions, and conducted business behind closed doors that legally should have occurred in the open.

On at least one occasion, May 30, 2002, it appears the Committee told the public it was adjourning for the night; however, the records show it actually held a secret, closed session just minutes later.

On Oct. 4, 2002, The Salem News formally requested copies of all the Committee's minutes from 2002. They were not delivered until Jan. 15, 2003, more than three months later.

The Salem News respectfully asks that your office review these records and produce a written opinion regarding the legality of the Committee's actions in 2002.

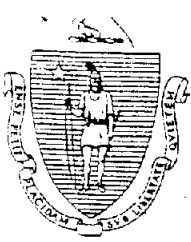
Thank you.

Sincerely,



Karen Andreas  
Editor

CC: District Attorney Jonathan Blodgett



THE COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE  
DISTRICT ATTORNEY FOR THE EASTERN DISTRICT  
SALEM NEWBURYPORT LAWRENCE

Museum Place  
Two East India Square  
Salem, Massachusetts 01970

TELEPHONE

Jonathan W. Blodgett  
District Attorney

SALEM (978) 745-6610  
FAX (978) 741-4971  
TTY (978) 741-3163

April 2, 2003

Ms. Linda Halfrey  
Assistant Metro Editor  
The Salem News  
37 Dunham Road  
Beverly, MA 01915

**RE: Hamilton-Wenham School Committee/Open Meeting Law**

Dear Ms. Halfrey:

This Office was asked to review the meetings of the Hamilton-Wenham School Committee for alleged violations of the Open Meeting Law. In all, minutes of meetings, both Open Session and Executive Session, as recorded on twenty-four separate dates, beginning January 3, 2002 and ending December 19, 2002, were reviewed. The complainant, Salem News, supplied the minutes that were reviewed. In reviewing these materials, inquiry was also made of the School Committee attorney.

This review has found several violations of the Open Meeting Law on numerous occasions.

- The Committee routinely conducted business in Executive Session other than the stated purpose for entering Executive Session given in the Open Session.
- Generally, the purpose stated for the Executive Session was not specific enough; the particular matters never identified.
- On numerous occasions, the matters discussed and decided in Executive Session were not matters that would permit the use of an Executive Session.
- Also, the Executive Session minutes were often inadequate. Although minutes are not expected to record a meeting verbatim, they must include enough information so that the substance of the deliberations may be readily understood.
- Of concern also is the method used to enter Executive Session. Routinely, the Committee would adjourn a public meeting and then vote to go into Executive Session. In so far as the law requires a vote to enter Executive Session from an

Open Session, it is suggested that the Committee vote to go into Executive Session prior to adjourning the Open Session.

The most serious violations of the Committee concern the use of Executive Session to deliberate and decide matters not permitted by the Open Meeting Law to be considered in Executive Session. Such deliberations and decisions are required by law to have taken place in the Open Session.

In some instances, it is enough for a governmental body that has violated the Open Meeting Law to acknowledge the violation. In other circumstances, a violation or pattern of violation is of such a character that corrective action is required by the body to remedy the noncompliance with the law.

I have set forth above, in a general sense, the violations that were found. An attempt will now be made to specifically identify the particular violations and suggest the appropriate remedies. The remedies differ because not every Executive Session resulted in a vote by the Committee. The minutes were reviewed in chronological order, beginning with the meeting of January 3, 2002.

On January 17, 2002 after opening the public meeting, the Committee voted to go into Executive Session for the purpose of discussing collective bargaining. No mention was made of what bargaining unit or issue the Committee would be discussing. The minutes of the Executive Session indicate the Committee met with a representative of Future Management Systems to hear a presentation concerning the potential role this firm could play in the search for a new Superintendent. Clearly, this is not the purpose as was stated in the Open Session. Nor is it a proper matter for Executive Session. During this Executive Session a vote was taken to authorize the Chairman to request a contract proposal from Future Management Systems to conduct a Superintendent search. The vote to accept the motion was unanimous.

On February 5, 2002 the Committee entered Executive Session from an Open Session. The purpose of the Executive Session as stated was to "discuss personnel contracts." The particular contracts to be discussed were not disclosed. The minutes of the Executive Session indicate that the Committee was in Executive Session for just over two hours. The minutes contain only three sentences for the entire meeting. In the session the Committee discussed the criteria for the Superintendent search. This is not the purpose as was stated in the Open Session and is not a purpose that is properly the subject of Executive Session. Also a vote was taken to set the salary range for the new Superintendent. Again, this was not the purpose stated and the subject ought to have been in public.

On February 28, 2002 from an Open Session the Committee voted to enter into Executive Session. The purpose for the Executive Session as stated by the Committee was to discuss negotiating contracts. During the Executive Session the Committee

reviewed bids from firms for the Superintendent search. This was not the purpose stated and not a proper subject of an Executive Session. There was also a vote taken that night to give the search contract to Future Management Systems for \$13,920. This vote ought to have taken place in Open Session.

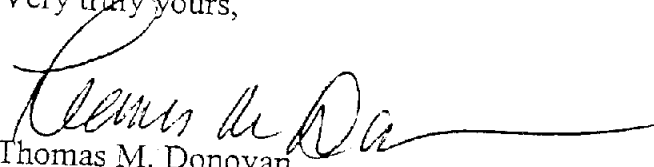
On May 16, 2002 the Committee apparently entered into Executive Session two times. The first Executive Session was at 6:05 pm. The purpose as stated was to discuss collective bargaining. Only four votes in the affirmative were given to enter the Executive Session. The law requires a majority of the membership of the governmental body to approve the use of Executive Session. In this instance, four votes were not enough to authorize the Executive Session. Once in the Executive Session, the Committee did not discuss collective bargaining, but updated the Committee on the Superintendent search. After this Executive Session the Board went back into Open Session and then once again entered Executive Session, the purpose stated being to discuss legal and collective bargaining. The legal matter to be discussed was not identified nor was the particular subject of collective bargaining identified. A vote was taken to approve the custodial contract and salary increases. Further, the minutes do not adequately reflect what deliberations took place.

In order to remedy the violations specified on the above-mentioned dates, the Committee ought to recreate its deliberations for those meetings and prepare adequate minutes of those meetings. These minutes ought to be forwarded to this Office to determine their adequacy and, ultimately, be made public. Given the passage of time, this would be the remedy that best serves the public.

The purpose of the Open Meeting Law is to insure the public has broad access to the deliberations and decisions made by its elected officials. It is certain that the Committee regularly denied the public this access. It should be noted that the violations became less obvious as the year progressed. In my review of this matter, Counsel for the Committee has been cooperative and forthright.

In addition to the measures set forth above to remedy specific meetings, the Committee ought to receive training on the Open Meeting Law. This Office will be happy to arrange such a training.

Very truly yours,

  
Thomas M. Donovan  
Special Counsel

TMD  
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