

Behind closed doors ^{4/9/03}

Citizens shut out of government as Hamilton-Wenham School Committee conducts illegal closed meetings

By **THOMAS LAKE**
Staff writer

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What happened in those closed sessions may never be known. Hours-long discussions were frequently recorded with sets of minutes no longer than one sentence.

In 24 closed meetings last year, the nine-member board:

- Consistently failed to give legal reasons for holding the so-called "executive sessions," then failed to accurately record votes within the meetings.

- Went behind closed doors ostensibly to talk about one topic, then shifted to another subject once they left the public eye — effectively playing an illegal game of bait-and-switch with citizens.

- Conducted business behind closed doors that legally should have occurred in the open, including the search for new Superintendent Marinel McGrath.

After reviewing public records obtained by The Salem News, the Essex County district attorney's office drew similar conclusions.

"The purpose of the Open Meeting Law is to ensure the public has broad access to the deliberations and decisions made by its elected officials," said Special Counsel Tom Donovan, who is in charge of enforcing such laws for the DA's office. "It is certain that the committee regularly denied the public this access."

The School Committee did not deny the charges.

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Why should citizens care?

"Nobody wants government behind closed doors in smoke-filled rooms," said Bob Ritchie, director of the state attorney general's Municipal Law Division. "The people who put these governmental bodies into place have a right to know what's going on."

The elected board controls a school district that teaches 2,200 children, employs 245 workers and spends close to \$20 million a year — including more than half the annual budgets of Hamilton and Wenham combined.

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But secrecy still veils many of its spending and policy decisions from last year.

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The Salem News later asked for copies of all the committee's executive session minutes from 2002. They were delivered more than three months later — well past the 10-day deadline state law imposes on requests for public records.

Honest mistakes?

Hamilton-Wenham School Committee members are not professional politicians. Many drive straight from their day jobs in Boston to attend lengthy night meetings.

They are not paid for their time. And they may not have meant to break the law.

"It was never our intent to conduct executive sessions to deliberate and decide matters that were not permitted by the Open Meeting Law," Morse said in the statement. "Policymaking at the community level can only be conducted effectively if it is done in the full view of community members and actively seeks their guidance."

None of the other board members responded to interview requests — including Mike Abbott, who was chairman when the most severe violations took place and is now leaving the School Committee to run for a seat on the Hamilton Board of Selectmen.

David Neill, who in May will vacate the selectman's seat Abbott is running for, was taken aback when he found out the School Committee had discussed the superintendent search in a closed meeting.

"That surprised me," he said, "that they weren't more aware (of the law)."

That law requires government meetings to remain open to the public unless a discussion falls into one of nine categories, which include personnel matters and litigation — and can often be difficult to define.

"Oftentimes," said District Attorney Jon Blodgett, "these things happen without people having the wrong intent."

Ritchie, who helps enforce the Open Meeting Law for the state attorney general's office, said he frequently sees local boards transgress.

The mistakes are generally innocent, and the problem is usually solved by a letter from the local district attorney's office.

"They try to do their very best," he said of small-town board members, "with little training, little money, little resources."

Conditions have improved since The Salem News first challenged the committee last October.

Instead of a sentence or two, minutes of executive sessions now consist of two or three pages. When members move in open session to adjourn to closed session, they generally give detailed, apparently legal reasons for doing so.

School Committee attorney Naomi Stonberg recently conducted an Open Meeting Law workshop for the board members. Even before the district attorney's office found the violations, she said, the problem had been solved.

"Hopefully," said Ritchie, "the district attorney's office will be compassionate in meting out consequences."

Blodgett has no immediate plans to file a complaint against the committee in Superior Court, as he could legally do.

Judges who find violations can fine boards up to \$1,000 for each illegal meeting — and nullify any action taken in the meetings.

"The attempt of this office in pointing (the violations) out was not to be punitive, but to be remedial," Blodgett said.

His office found violations in the records of four closed committee meetings from 2002. Now he wants members to jog their memory and create new sets of detailed minutes for those meetings.

"These minutes," Donovan wrote, "ought to be forwarded to this office to determine their adequacy and, ultimately, be made public."

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VIOLATIONS

The Salem News reviewed an entire year's worth of meeting records for this story and found these among the violations:

• **Jan. 17.** The board closes the doors, claiming it plans to talk about collective bargaining. In fact, they hear a presentation from Lyle Kirtman of Future Management Services, a firm that helps school districts find new superintendents. Then-chairman Mike Abbott asks Kirtman for a contract proposal to help the district replace retiring superintendent Dennis DiSalvo. "Clearly, this is not the purpose as was stated in the open session," Donovan wrote. "Nor is it a proper matter for executive session."

• **Feb. 5.** The board again calls Kirtman into the closed meeting room after telling the public it plans to discuss personnel contracts. Members vote to set a salary range for the superintendent search at \$115,000 to 125,000. "This was not the purpose stated," wrote Donovan, "and the subject ought to have been in public."

• **Feb. 28.** After reviewing three bids for the superintendent search in closed session, the board votes to award a \$1.3,920 contract to Future Management Systems. Under the state Open Meeting Law, the discussion and vote should have taken place in public.

• **May 16.** The board conducts two separate closed meetings in one night. In the first meeting, Kirtman delivers information on four finalists for the superintendent position. But only four committee members vote to enter the session — one less than the majority required by law. (Kirtman, whose company is based in Danvers, could not be reached for comment.)

In the second meeting, the board approves raises for nurses and custodians, but records give little detail about the discussions.

"The minutes do not adequately reflect what deliberations took place," Donovan wrote.

Keeping government open

Whether they're selectmen, city councils or school committees, government boards are bound by state law to let citizens watch them conduct the public's business.

Officials are allowed to go behind closed doors sometimes — most often to discuss lawsuits or labor negotiations — but in general, the public has a right to be in the room.

If you think a board is closing a meeting illegally, say so.

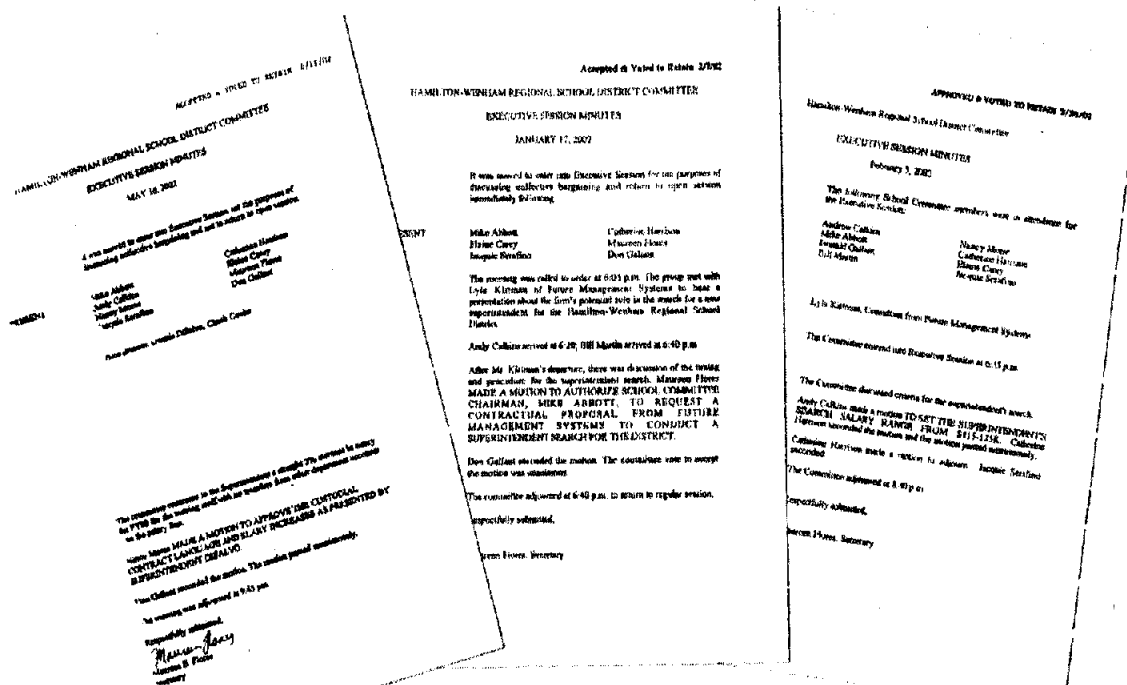
"If they declare it a non-public meeting, insist that they quote the law (that allows them do so)," said former Essex County Newspapers editor Bill Plante, who helped draft the state's Open Meeting Law.

If the board insists on closing the meeting without grounds, take it a step further.

"Storm the ramparts," said Plante, now executive director of the Massachusetts Association of Newspaper Publishers. "Just walk in. It's a public meeting."

If that doesn't work, contact the District Attorney's Office at (978) 745-6610.

Or, you can personally file a complaint in Superior Court. All you need are the signatures of three registered voters. Make sure you file less than 21 days after the illegal action is made public.



These are samples of copies of the Hamilton-Wenham Regional School District Committee's executive session minutes from 2002. The DA's office found the committee violated the Open Meeting Law in several instances. The above minutes reflect some of the violations, such as failing to accurately record votes within the meetings, and not including enough information to reflect the discussions.

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