



Sunday, April 18, 2004

Records hint at open meeting law violations

By Meir Rinde
Staff Writer

ANDOVER -- Minutes from 13 years of closed School Committee meetings appear to show discussions of topics that should have been handled publicly.

A review of the minutes -- records of the meeting discussions -- shows committee members talked about issues such as communicating with the public and other town officials, how to get more money from the town to operate schools, and dealing with parents' complaints about a math program.

Those are not among the topics allowed by law for discussion in secret meetings, otherwise known as executive sessions.

State law allows nine exceptions to the open meeting requirement, including discussing complaints against a staff member, strategizing or conducting collective bargaining, talking about ongoing litigation and discussing real estate purchases and leases, if an open discussion would hurt a committee's negotiating position.

The School Department released the minutes last week, with some sections deleted, after School Committee member Christopher Smith found out about the backlog and said the documents should be made publicly available.

The Board of Selectmen periodically releases executive session minutes after Town Manager Reginald S. "Buzz" Stapczynski reviews and edits the documents. State law says executive session minutes must be released as soon as the justification for keeping the topic secret has ended.

By contrast, North Andover Superintendent Harry K. Harutunian said he has his School Committee approve executive session minutes when they are written, and then he holds onto them until the matters discussed have been resolved. He makes them publicly available in the town clerk's office within "a reasonable time," he said, but would not

specifically say how long he holds the minutes before their release.

Andover School Committee Chairman Anthony H. James said the committee plans to release new executive session minutes on a regular basis from now on after reviewing the minutes and blacking out areas that must remain secret, like the names of teachers who have filed grievances against the district.

Perhaps the clearest example of an apparently illegal discussion during recent executive sessions occurred Oct. 21, where one line of the minutes read, "Discussion of new math program at the middle schools and feeling pro and con."

"You're right. That shouldn't be there," Superintendent Claudia Bach said last week. "I have no doubt about that. I don't even remember what we discussed, but I'm sure it came up."

Parents at West Middle School had complained publicly about the then-new seventh-grade program, and the administration ended up holding information sessions on the program and speeding up its implementation.

Bach said she and the committee have never intentionally disobeyed the open meeting law, and she cautioned that items may sometimes appear in the minutes that were just mentioned briefly, depending on what the note-taker happened to think was important or interesting.

North Andover School Committee Chairman Daniel J. Murphy said while he was unfamiliar with issues Andover's School Committee may have been discussing, in general his committee would discuss a curriculum change like the math program at an open meeting. But he warned about reading too much into meeting minutes.

"We may finish the agenda and somebody may continue a discussion from a public session," he said. "We're not discussing officially, but you're human beings and you're working to do a good job for the school system, and the discussion continues and the secretary continues to take notes.

"In a situation where there's no motive to do something secretly, it might appear there was a discussion that should have happened in public," he said. "There are human elements that come into conducting these things, and there's no ill motive."

Thomas Donovan, special counsel to Essex District Attorney

Jonathan W. Blodgett, said he could not comment on Andover's executive session minutes until he reviews the documents. Donovan has investigated accusations of improper use of executive sessions in several Essex County towns in the past year.

One topic that came up repeatedly in recent School Committee executive sessions in Andover was a Department of Education order to add more class time at the high school. The order resulted from a public complaint from a parent and an article in The Eagle-Tribune.

"That is a litigious issue, where we could have had action taken against us," Bach said last week.

But former Chairwoman Tina Girdwood says she was unaware of any impending legal problems, other than the broad possibility of a sanction by the DOE. She also said it was likely that at some executive session meetings during her nine-year tenure the committee strayed into forbidden areas despite her and other members' efforts to cut off discussion.

According to an analysis of open meeting law by state Attorney General Thomas Reilly, potential lawsuits may not legally be discussed in executive session.

"Discussions relating to proposed litigation are not covered by this exemption unless that litigation is clearly and imminently threatened," Reilly wrote on his department Web site.

Another justification for keeping the DOE discussion private was that the outcome of the problem involved negotiating with teachers to work for longer hours or change their schedules, Girdwood and Bach said.

It is unclear how far a committee may legally expand the collective-bargaining exception to the opening meeting law. At a Dec. 12 meeting where Bach discussed the DOE issue, Girdwood also "spoke to (the) group on dealing with press and outside communication," according to minutes from that meeting. Bach says that discussion was not related to the DOE issue, but nowhere does state law say committees may have private discussions of their media strategy.

In the minutes, Girdwood also argued that a November closed-door discussion about how the DOE order "implicates (the committee's) relation with (the) Town and budget" and how the committee "should deal with the (Capital Improvement Plan budget) in meeting with Selectmen and (the) Finance Committee" also fell under the collective-bargaining exception

because the budget would affect negotiations.

"It was all part of the picture and figuring out how to move forward," Girdwood said. "When you look back at this and see the DOE issue in isolation, you might say it doesn't seem appropriate to discuss it. But to do justice to the committee and the administration, you have to put it in the context about what they knew and didn't know.

"At that time, it may have seemed like a very reasonable thing to be discussing that in executive session. There wasn't any attempt to keep that from the public."

[Next Story: Hospital president will pick successor](#) 

Copyright© 2003 Eagle-Tribune Publishing. All Rights Reserved. Contact [Online editor](#)