

Talbot County Taxpayers Association, Inc.

P.O. Box 438
Easton, MD 21601-8907

March 31, 2010

Talbot County Board of Education
12 Magnolia Street,
Easton, MD 21601

Dear Board Members:

We believe you are violating Maryland's open meetings laws. Taxpayers have a right to know how their money is being spent. Your excessive use of closed meetings, contrary to law, denies the taxpayers their right to understand how you make many important decisions.

This situation came to our attention as we were preparing our arguments against your initial decision to deny use of school property to the St. Michaels Fire Department for their annual fundraising carnival. You made the initial decision in closed session. Following the immediate public outcry, you met again in closed session and confirmed your decision to deny. Finally, after a further public outcry, you voted in open session to permit the fire department to use the school property, but you deliberated before the vote in closed session. You again deprived the public of their right to hear and understand the reasons for your decision. None of this was, in our view, legal.

Let's start with the Education Article of the Annotated Code of Maryland. Title 3 establishes the county boards of education. We refer you to Subtitle 12A which establishes the Talbot County board. Among other things, this subtitle sets out your meeting requirements.

“§ 3-12A-05. Meetings.

“(a) *In general.*- The county board shall meet at least once each month.

“(b) *Actions to be public.*- Except for those actions authorized by subsection (c) of this section, all actions of the county board shall be taken at a public meeting and a record of the meeting and all actions shall be made public.

“(c) *Executive session.*- The county board may take actions in executive session in accordance with §10-508 of the State Government Article.”

The minutes of your required monthly meetings regularly use §10-503 (a) (1) (I) as one of your justifications for moving into closed session. This section permits a public body to work in closed session when performing administrative functions. However, this section does not pertain to you. You do not have authority under §3-12A-05, quoted above, to close your meetings for administrative matters. You can only close your meeting under § 10-508.

As a public body, you are expected to meet the requirements of the Maryland Open Meetings Act. §10-508 of the State Government Article is the codification of the 14 exceptions specified in the Act that permit a public body, like yours, to deliberate and act in closed session. While you claim one or more of these exceptions permit you to meet in closed session, it appears to us that you misconstrue what is permitted under these exceptions. For example, your president, in her letter to the editor, claimed that you acted on the fire department's request in closed session because it was a real estate matter.

She was referring to §10-508 (a) (3) which says the meeting may be closed to the public in order to "consider the acquisition of real estate for a public purpose and matters directly related thereto." This section is clearly limited to the acquisition of real estate. It is not about the use of real estate, as you seem to believe. Therefore, your deliberations and actions in closed session on the fire department's request were not lawful.

We suspect that you are also misconstruing §10-508 (a) (1). This exception permits you to move into closed session when dealing with certain types of personnel matters. However, it does not permit you to discuss all personnel matters in closed session, as you seem to be doing. Discussions about matters affecting classes of employees, not specific individuals, are not covered by this exception. Your explanation for closing the session should state clearly what personnel matters you intend to discuss.

Your minutes indicate to us that you are misusing every one of the exceptions you cite -- even the one that permits you to go to closed session in order to consult with counsel to obtain legal advice. This exception does not permit you to close your discussion of every matter that involves or will potentially involve litigation. It is limited to the give-and-take between lawyer and client in the context of rendering advice. Otherwise, the discussion must take place in public. The law requires that you construe these exceptions very narrowly.

A review of several of your recent meeting minutes, suggests that you use a boilerplate citation of your authority to move into closed session. You regularly state exception §10-508 (a) (6) as one of your authorities. This exception permits you to close the meeting in order to "consider the marketing of public securities." You're not doing this. Have any of you actually read these exceptions before you vote to close your meetings? This use of boilerplate does not meet the requirements of §10-508 (d) for recording the purpose and your vote for moving into closed session.

We observed your vote on the fire department's request at your March meeting. While you acted properly in open session, you evidently discussed this before hand in closed session. This is prohibited. §10-508 (b) says, "A public body that meets in closed session under this section *may not discuss* or act on any matter not permitted under subsection (a) of this section." The emphasis is ours. The establishing legislation for school boards in some counties does permit deliberations to be in closed session; however, Talbot County is not one of these.

The Act requires that the minutes of any closed session contain more information than you are currently providing. For example, you must record any actions taken during the closed session, including the vote thereon of each member present.

We recommend that you immediately evaluate your current practices for closing meetings from the public. These should be adjusted to comply with the law. The Office of the Maryland Attorney General has many resources that can help you with this.

If you disagree with any of our interpretations of the Maryland Code and your current practices, would you please let us know the reasons? You can reach our president at (410) 745-3077. Otherwise, we will expect you to follow the law beginning with your April meeting. We would prefer not to pursue this matter further, although we are prepared to do so.

Sincerely,

Talbot County Taxpayers Association, Inc.

By:

Edward J. Doyle
President

Cc: Carolyn Swift, *The Star Democrat*