Thu 4/30/2015 11:20 AM

Dear Mr. Jadhon:

I left Tuesday evening's school board meeting once again feeling extremely disappointed in the people who we, as taxpayers, vote to represent our interests regarding New Hartford Central School decisions. My first reaction was to write a blog; however, upon further reflection, I decided that maybe school board members just do not understand their obligations under the Freedom of Information and Open Meetings Laws. Let me enlighten the board in the hopes that board members will conduct future board meetings in accordance with the law.

First of all, whether an "anonymous letter" is discussed at a board meeting or not, Mr. Flemma is absolutely correct that the receiving of all correspondence whether sent as an email; delivered via U.S. Mail; or hand-delivered is considered a record that is FOILable. A person is not limited to FOILing a particular document only if it is discussed at a school board meeting, but rather anyone can FOIL all emails or other correspondence received by any board member for 2014-15 (or any other time span) and the school would be required to produce both signed and anonymous correspondence for that time period redacting any information clearly deemed to fall under the privacy exception. The school also has an obligation to keep all records in accordance with the NYS Arts & Cultural Affairs Law so destruction of records merely because they were sent anonymous should not be a choice.

Next, the board has a tendency to vote for executive session by "merely regurgitating" the statutory language of the Open Meetings Law. School Attorney Joseph Shields has written an article, "Seven legal do's for board members", found at: http://nysasa.org/index.php/news/106-seven-legal-dos-for-board-members. According to Attorney Shields, do's number 7 is "Understand the process to lawfully enter into executive session".

Robert Freeman, Executive Director for the Committee on Open Government has written several opinions citing case law regarding non-compliance by boards who do not give sufficient reason to enter executive session. The school board might take note of a recent court case, Zehner v Board of Education of Jordan-Elbridge Central School District that is synopsized on the Committee for Open Government's website at https://www.dos.ny.gov/coog/zehner.html.

In this court case, an Article 78 was initiated against the Jordan-Elbridge Central School District for violation of the Open Meetings Law in three scenarios when the School Board motioned for entry into executive session, but failed to use sufficiently descriptive language.

The court "confirmed that a motion to conduct an executive session should include information sufficient to enable the public to believe that there is a valid basis for closing the doors". The lower court ordered that the petitioner be awarded attorney fees and the school board was ordered to participate in training sessions "concerning the obligations of Article 7 of the Public Officers Law conducted by the staff of the Committee on Open Government and provide and proof of same to this Court". The case was later appealed by the school district; however, the Appellate Court upheld the decision of the lower court. There are links to both the lower court decision and the Appellate Division decisions in the Committee for Open Government link I have provided above.

Mr. Freeman has opined that "if premature identification of that person or entity could adversely affect the interests of the school district and its residents, it has been suggested that the motion need not identify that person or entity, but that it should clearly indicate that the discussion will involve litigation strategy." While there may be instances where naming the litigants might compromise the school's position were the litigants to be revealed, I am highly doubtful that in every instance where the school board has entered into executive session citing current, pending or proposed litigation, their discussion would fall under that exception.

According to Mr. Freeman in his opinion AO-5114, "it was held thirty years ago by the Appellate Division, Second Department, that §105(1)(d), the "litigation" exception for executive session, is intended to enable a public body to discuss its litigation strategy in private, so as not to divulge its strategy to its adversary. In Freeman's opinion AO-4814 he states, "only to the extent that a discussion involves litigation strategy would an executive session be properly held under §105(1)(d)".

Finally, more often than not, it is impossible for me, not to mention viewers of the school board meeting videotapes, to hear Mr. Nole when he speaks even though I am standing just a few feet from the board table while videotaping. I have been contacted by several people from the community regarding the inability to understand Mr. Nole on the videos I post on YouTube. For a school district with the wherewithal of New Hartford to not provide either a room where everyone at the table can be heard or better yet a microphone to amplify the school board discussion is absolutely absurd. Are the taxpayers to assume that Mr. Nole does not want everyone to hear his contributions to school board meeting discussions?

I will end by saying that the videotapes are viewed by many more people than regularly attend the school board meetings. It would serve the school district and the school board well to do their utmost to assure that all school personnel and board member voices can be heard during school board meetings and that those meetings are conducted in accordance with the law at all times.

Respectfully,

Catherine Lawrence