

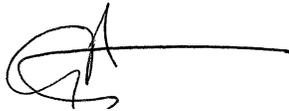
# MASON, GRIFFIN & PIERSON

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## MEMORANDUM

To: Mayor and Council of Princeton

From: Edwin W. Schmierer, Esq.  
Princeton Attorney



Date: January 20, 2014

**Re: Open Public Meetings Act: Council Committee Assignments**

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You have requested that I provide an opinion as to whether or not the Mayor and Council may discuss 2014 council committee assignments in a closed session of the governing body under the provisions of the New Jersey Open Public Meetings Act, *N.J.S.A. 10:4-6 et seq.*

For the reasons set forth hereinbelow, I would advise the governing body not to discuss council committee assignments during a governing body closed session.

The declared purpose of the New Jersey Open Public Meetings Act (“Act”) is to ensure the right of all citizens to have advance notice of and attend all meetings of public bodies at which any business affecting the public is discussed. There are certain exceptions, one of which I will discuss hereinbelow.

The legislative history of the Act requires that public business be discussed in public. “Public business, to be covered, need merely be related in some way to the public body’s function or business” (*See N.J.S.A. 10:4-6*).

In the Act, there are specific legislative findings and declarations which must be followed. Specifically, those findings are as follows:

“The legislature finds and declares that the right of the public to be present at all meetings of public bodies, and to witness in full detail all phases of the deliberation, policy formation, and decision making of public bodies, is vital to the enhancement and proper functioning of the democratic process; that secrecy in public affairs undermines the faith of the public in government and the public’s affect of this in fulfilling its role in a democratic society, and hereby declares it to be

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the public policy of this State to ensure the right of its citizens to have adequate advance notice of and the right to attend all meetings of public bodies at which any business affecting the public is discussed or acted upon in any way except only in those circumstances where otherwise the public interest would be clearly endangered or the personal privacy or guaranteed rights of individuals would be clearly in danger of unwarranted invasion.....” (*See N.J.S.A. 10:4-7*).

The Act, in addition to referring to “public business” in the legislative findings specifically identifies this term as follows:

“‘Public business’ means and includes all matters which relate in any way, directly or indirectly, to the performance of the public body’s function or the conduct of its business” (*See N.J.S.A. 10:4-8c*).

As indicated above, there are specific instances when a public body may exclude the public from a portion of their meeting. The exception that may have applicability to the ability of the governing body to meet in closed session to discuss council committee assignments would be the following exception:

“(8) matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of, promotion, or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the public body, unless all the individual employees or appointees whose rights could be adversely affected request in writing that the matter or matters be discussed at a public meeting” (*See N.J.S.A. 10:4-12b(8)*).

This has customarily been referred to as the “personnel exception” to the Act. I am of the opinion however that this exception to the Act would not be applicable to a governing body internal discussion of council committee assignments. This type of discussion would not involve a governing body’s “employment” since each of you have been elected by the people to serve on the governing body; it would not involve your “appointment” as elected officials since as indicated you have been elected to serve in this capacity; it would not involve the termination of employment, terms and conditions of employment, evaluation of the performance of, promotion or disciplining of a public officer which all of you are.

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In my research, I can find no reported New Jersey decision interpreting the Act and in specific the above referenced personnel exception which would justify the governing body discussing in closed session council committee assignments. I have found a number of reported decisions indicating that the Act creates a strong presumption of access to all public body meetings, allowing the public to view all meetings at which any business affecting the public is discussed or acted upon in any way.

There have been cases which have clarified and discussed the “personnel exception” to the Act. In *South Jersey Publishing Company, Inc. v. New Jersey Expressway Authority*, 124 N.J. 478 (1991). This case involved the termination of the Atlantic City Expressway Authority’s Executive Director. This termination and memorandum of understanding with regard to same was discussed by the Authority in closed session under the “personnel exception” to the Act. A suit was brought by the plaintiff to obtain copies of the minutes of the closed session and a copy of the memorandum of understanding. The New Jersey Supreme Court reversed the lower courts and remanded the matter directing that the minutes be released as well as the memorandum of understanding. The court however did discuss the application of the “personnel exception” to the Act. The court noted that the “personnel exemption focuses on free and uninhibited discussion about matters relating to the hiring, firing, performance, compensation and discipline of public employees (*ibid* at 493). In applying this Supreme Court directive, I do not believe the exception applies to a discussion of the governing body’s council committee assignments for 2014.

There are other cases which also indicate that any exceptions to the Act should be narrowly defined and strictly construed and that the salutary legislative purpose of requiring governmental bodies to conduct their business in public should always be met (*see Hartz Mountain Industries, Inc. v. New Jersey Sports and Exposition Authority*, 369 N.J. Super 175 (Appellate Division 2004)).

Not finding therefore a clear directive under the Act which would permit a closed session discussion of council committee assignments, I would urge the Mayor and Council therefore to discuss governing body committee assignments in open session at a public meeting.

Finally, I was asked to comment on the “political caucus” option for the discussion of council committee assignments. The Act specifically excludes from the definition of “public body” political caucuses or political party committee meetings. The Act does not however define this term. A political caucus or a political party committee is traditionally a gathering of members of one party which meets periodically to discuss partisan political issues concerning candidates for office, potential appointments of members to various boards and bodies and a party’s position with respect to county or state proposals or projects. New Jersey Supreme Court in *Witt v. Gloucester County*

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*Board of Chosen Freeholders*, 94 N.J. 422 (1983) commented on this exemption from the Act; the lack of definition of a political caucus by the Act and further the lack of direction governing body members have under the Act and guidelines issued by the New Jersey Department of State as to when this exception can be appropriately utilized.

EWS:kaj

cc: Robert Bruschi, Administrator  
Kathy Monzo, Assistant Administrator  
Linda S. McDermott, Clerk  
Robert V. Kiser, P.E., Princeton Engineer