

COUNTY OF MERCER

PRINCETON

STATE OF NEW JERSEY

RESOLUTION

WHEREAS, the Office of the Princeton Municipal Attorney, Mason, Griffin & Pierson, P.C., has provided an opinion memorandum dated May 30, 2014 to the Mayor and Council regarding the applicability of the Open Public Meetings Act to political caucus meetings and team-building retreats attended by a quorum or more of the members of the Princeton governing body; and

WHEREAS, this opinion is subject to attorney-client privilege; and

WHEREAS, only the Council can waive the attorney-client privilege and make the May 30, 2014 opinion public;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of Princeton on this 23rd day of June, 2014 that same hereby waive the attorney-client privilege with respect to the Princeton Municipal Attorney's opinion set forth in a memorandum from Mason, Griffin & Pierson, P.C. dated May 30, 2014 regarding political caucus meetings and team-building retreats, and said opinion therefore is released from its confidentiality restrictions and may be made public.

CERTIFICATION

I, Linda S. McDermott, Clerk of Princeton, do hereby certify that the foregoing Resolution was considered and adopted by the Princeton Council at a regular meeting held on the 23rd day of June, 2014.

Linda S. McDermott, Clerk
Princeton

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MEMORANDUM

To: TWC

From: VDB *VB*

Date: May 30, 2014

Re: **Princeton: OPMA, political caucus meetings and team building exercises**

Political Caucus Meetings under OPMA

You recently asked me for an advisory memorandum on what constitutes a political caucus meeting exempt from the requirements of the Open Public Meetings Act ("OPMA"). It is my understanding that the Princeton Mayor would like to set up such a meeting with members of the Princeton Council, the President of the Princeton Community Democratic Organization, the Chair of the Princeton Democratic Committee, the Chair of the Mercer County Democratic Committee, and Democratic candidate Sue Nemeth. In short, meetings among local political leaders concerning issues of general political importance to the community or where positions as a political party on local issues are determined are exempt from OPMA.

OPMA provides that "typical partisan caucus meetings" are not covered, nor were intended to be covered, by its provisions. *N.J.S.A. 10:4-7*. The only guidance on what constitutes a "typical partisan caucus meeting" is the case of *Mountain Hill, LLC v. Township of Middletown*, 399 N.J. Super. 486 (App. Div. 2008). In *Mountain Hill*, a large landowner with a proposal for a mixed residential/commercial development project sued the township and its committee members alleging violations under OPMA because the committee members discussed at closed political caucus meetings three ordinances that adversely affected the landowner's property. The Appellate Division affirmed the trial court's holding that the private political caucus meetings attended by members of the township committee did not violate OPMA.

The court considered a number of factors when determining whether or not there had been a violation of OPMA, including:

1. Whether non-political party members, such as municipal staff, attended the meetings;
2. Whether the discussions focused on specific municipal business, or more generally on the political importance or implications of community issues and events;
3. Whether proposed or anticipated municipal business was discussed before public action was taken (*i.e.*, proposed ordinances or anticipated development projects);
4. Whether the elected officials discussed how they intended to vote on proposed issues,

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May 30, 2014
Page 2

- or otherwise came to an agreement on any such future voting; and
5. Whether the elected municipal officials were all affiliated with the same political party.¹

The inquiry conducted by the courts is fact specific, and the weight given to the factors that are considered when analyzing potential violation of OPMA are likely to vary on a case-by-case basis.

In *Mountain Hill*, the court held that meetings where members did not intend to discuss or act upon municipal business, but rather focused on “the political ramifications of [local] events,” were exempt from the provisions of OPMA. Specifically, OPMA does not encompass political caucus meetings where members discussed the political implications of projects or events, and their importance to the party in terms of votes. Likewise, meetings that focused on the political pulse of the local residents and “how to spin items of political importance” are considered typical partisan caucus meetings exempt under OPMA.

In conclusion, the Mayor can set up a caucus meeting with local political leaders, including Council members, provided that: (1) only political leaders are present at the meeting; (2) no discussion is held on specific projects, developments and events, or anticipated municipal business, where public action has not yet been taken; and (3) no discussion is held or an agreement reached on how elected officials are going to vote.

Team Building Sessions/Retreats

You also asked me to determine under OPMA whether the Mayor and Council could gather for a team building exercise or retreat, especially in light of the Department of Community Affairs’s (“DCA”) recent guidance on this issue. Having reviewed the statute, the Mayor and Council can participate in a team building exercise or retreat provided that the advice outlined above is followed (*i.e.*, no discussions concerning specific municipal business, and no discussions/agreements on anticipated voting). Any such team building exercise or retreat should be publicly advertised with such notice stating that no public business will be discussed. Likewise, as the DCA advised, the Mayor and Council should be reminded that they cannot discuss public business at this session, even hypothetically, because that would constitute a violation of OPMA. Any outside trainers assisting the Mayor and Council with their team building exercise or retreat also should be advised that conversations concerning public business are prohibited so they can stop any conversations that appear to be heading in that direction.

¹ Although meetings where all of the local elected officials are of the same political party blurs the lines between typical partisan caucuses and open public meetings, this is not the sole determining factor as to whether there has been a violation of OPMA.