

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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In the Matter of ORANGE COUNTY PUBLICATIONS
DIVISION OF OTTAWAY NEWSPAPERS, INC.,

Petitioner,

-against-

Index #5685/78

THE CITY OF MIDDLETOWN, THE COMMON COUNCIL
OF THE CITY OF MIDDLETOWN,

Respondents.
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SWEENEY, J.

This is an Article 78 proceeding brought pursuant to the enforcement provisions of §102 of the Public Officers Law seeking a judgment directing the respondent, Common Council, to comply with certain provisions of Article 7 of that enactment (The Open Meetings Law).

On November 16, 1978, the respondent Council conducted an "executive session" from which the public and news media were excluded. The subject matter of this meeting was a proposal to lay off fourteen (14) of the respondent municipality's thirty-eight (38) paid firemen.

The court agrees with petitioner's contention that personnel lay-offs are primarily budgetary matters and as such are not among the specifically enumerated personnel subjects set forth in Subdiv. 1.f. of §100, for which the Legislature has authorized closed "executive sessions." Therefore, the court declares that budgetary lay-offs are not personnel matters within the intention of Subdiv. 1.f. of §100, and that the November 16, 1978 closed-door session was in violation of the Open Meetings La

Respondent Council is hereby prohibited from conducting any further executive sessions on issues regarding personnel lay-off unless one of the other subjects set forth in Subdiv. 1 of §100 are involved.

The other contention of petitioner concerns itself with the mechanics used by the respondent Council in convening its executive session. While respondents generally contend that the Council followed the provisions of Subdiv. 1 of §100, petitioner alleges that the subject matter of the proposed executive session was not identified prior to the Council's vote to conduct a closed session as mandated by the statute.

This court does not believe that further evidence need be submitted to clarify this issue since it would seem that if in fact the Council deviated from the procedure set forth in the statute, it was a relatively insignificant deviation.

It would appear that the Council President's response to the question of petitioner's own reporter rectified any prior failure on the part of the Council to identify the general subject matter of the closed session.

The first paragraph of Subdiv. 1 of §100 is quite clear with respect to the requirement that the general area(s) of the subject(s) to be considered must be set forth in a motion at an open meeting and that a majority vote of the total membership must be obtained in order to convene an executive session. Because of the clarity of the statute and the somewhat hyper-technical objection of the petitioner, the court believes that no injunctive order is warranted at this time with respect to this issue.

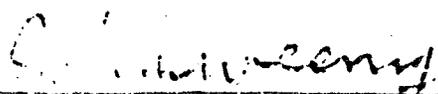
The further request for sweeping injunctive relief with respect to access to all meetings is also unwarranted since it is not even suggested that the respondent has indicated that it intends to initiate a policy of exclusion in violation of the statute.

Therefore, petitioner's application is granted only to the limited extent of the declaration and prohibition previously indicated concerning the provisions of Subdiv. 1. of §100.

Costs and counsel fees are denied since any violations on the part of the respondent Council were technical and its misapplication of the provisions of Subdiv. 1.f. of §100 was apparently in good faith.

The above shall constitute both the decision and the judgment of this court.

Goshen, New York
Dated: December 26th, 1978



JOHN W. SWEENY, J.S.C.

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