

FORMAL OPINION

We are informed that proposed projects may at some point require local expenditures either in the form of preparatory construction cost such as architectural fees or possible cost overruns. In this regard, it should be pointed out that the expenditure of any *local* moneys for purposes of school construction must be governed by the applicable provisions of Title 18A and those regulations and directives implementing such provisions. The fact that the actual construction of the school facility is basically funded by federal moneys does not relieve a school district from conformity with those statutory or regulatory requirements governing expenses which (a) might be incurred by the local district prior to the receipt of the federal grant and which are not reimbursable thereunder or (b) might be incurred by the local district after the expenditure of the total federal grant in order to complete the facility.

You are therefore advised that there is no legal requirement** that the anticipated construction of educational facilities by Type II school districts without a board of school estimate or by regional districts be submitted for voter approval where such construction is to be entirely financed with federal moneys. This conclusion does not concern Type I school districts, or Type II districts with boards of school estimate since such districts are not required by statute to obtain voter approval for construction projects under any circumstances.

Very truly yours,

WILLIAM F. HYLAND

Attorney General of New Jersey

BY MARY ANN BURGESS

Deputy Attorney General

* Public law 94-369, 42 USCA §6701, effective July 22, 1976.

** Pursuant to N.J.S.A. 18A:14-3, a local district could voluntarily choose to submit a question concerning the application and possible expenditure of federal moneys to its electorate at a special election. Consistent with this statutory provision, a board may take such action "at any time when in its judgment the interests of the schools require it."

October 28, 1976

HONORABLE CORNELIUS P. SULLIVAN

Acting Prosecutor, Burlington County

Burlington County Prosecutor's Office

49 Rancocas Road

Mt. Holly, New Jersey 08060

FORMAL OPINION NO. 29-1976

Dear Prosecutor Sullivan:

You have requested advice as to whether the Open Public Meetings Act requires a public body to provide 48 hour advance written notice before conducting a meeting in closed session.

ATTORNEY GENERAL

The Open Public Meetings Act contains several provisions dealing with the notice to be given before a meeting is held by a public body. Initially, the Act requires every public body to promulgate, at least once each year, a schedule of regular meetings to be held by it during the succeeding year. N.J.S.A. 10:4-18; *cf. Formal Opinion No. 2 — 1976*. To be included in this schedule is the time, date and, to the extent known, the location of each regular meeting.

In addition to this annual notice provision, the Act also provides that "... no public body shall hold a meeting unless adequate notice thereof has been provided to the public." N.J.S.A. 10:4-9(a). Under the Act's definition of "adequate notice" there are two ways in which this requirement may be met. First, a public body can provide advanced 48 hour written notice of its meetings. In this respect, "adequate notice" is defined in the Act to mean "advance notice of at least 48 hours, giving the time, date, location and, to the extent known, the agenda of any regular, special, or rescheduled meeting" together with a statement as to whether formal action will or will not be taken at that meeting. N.J.S.A. 10:4-8(d). The major difference between this 48 hour notice and the annual schedule of regular meetings is that the former requires the agenda and location of the meeting to be stated as well as whether formal action will be taken at the meeting, whereas the annual schedule only requires that the time, date, and, to the extent known, the location of each regular meeting be listed.

"Adequate notice" may also be provided by placing the time, date and location of a meeting in the annual schedule of regular meetings promulgated in accordance with section 10:4-18 of the Act. Providing notice in this fashion complies with the "adequate notice" requirement since the definition of "adequate notice" specifically states that "[w]here annual notice or revisions thereof in compliance with section 13 [N.J.S.A. 10:4-18] of this Act sets forth the location of any meeting, no further notice shall be required for such meeting." N.J.S.A. 10:4-8(d). In summary, then, "adequate notice" can be provided by either distributing 48 hours in advance, the time, date, location and agenda of the meeting together with a statement as to whether formal action will be taken or by including in the annual schedule of regular meetings the time, date and location of the meeting to be held. In light of these statutory notice requirements, your specific inquiry is whether a public body must provide "adequate notice" of meetings which it holds in closed session under section 10:4-12 of the Act. In general, the Open Public Meetings Act requires that "all meetings of public bodies shall be open to the public at all times." N.J.S.A. 10:4-12. The Act, however, does permit a public body to exclude the public from that portion of a meeting at which it discusses any of the items listed in subsection b of N.J.S.A. 10:4-12. Before excluding the public, however, section 10:4-13 of the Act requires the public body to first pass a resolution at a public meeting. This resolution must state the general nature of the subject to be discussed in closed session and the approximate time when the circumstances under which that discussion can be disclosed to the public. Since this provision requires a resolution to be passed "at a meeting to which the public shall be admitted" and the Act prohibits a public body from holding a meeting "unless adequate notice thereof has been provided," N.J.S.A. 10:4-9, the resolution for going into closed session must be passed at a meeting for which adequate notice has been provided.

A question arises whether this conclusion is altered to any extent by subsection 10:4-9(a) which exempts from the "adequate notice" requirement those meetings dealing with items allowed by law to be discussed in closed session. When read by it-

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self, subsection 10:4-9(a) suggests that "adequate notice" need not be given for a meeting held solely to consider items allowed by law to be discussed in closed session. However, in order to discern the probable legislative intent, subsection 10:4-9(a) must be read together and reconciled with subsection 10:4-13. Each part of a legislative enactment should be construed in connection with every other part to produce a harmonious whole. *Bravand v. Neeld*, 35 N.J. Super. 42, 52-53 (App. Div. 1955); *Wager v. Burlington Elevators, Inc.*, 116 N.J. Super. 390, 395 (Law Div. 1971). A statute should be construed so that effect is given to all its provisions so that no part will be inoperative, superfluous, void or insignificant. *Rainbow Inn, Inc. v. Clayton National Bank*, 86 N.J. Super. 13, 23 (App. Div. 1964) quoting from 2 Sutherland, *Statutory Construction* § 4705 (1943). Accordingly, it is our judgment that the probable legislative purpose underlying the enactment of these provisions was to allow a public body to hold a meeting limited to the items to be discussed in closed session without the need for "adequate notice" only if the public body has already passed a resolution required by section 10:4-13 at a prior public meeting for which adequate notice was given. In the event a resolution has not been passed by the public body at a prior public meeting for which "adequate notice" was given, the public body must then provide "adequate notice" of the meeting which it intends to hold in closed session and, at that meeting, pass the resolution required by section 10:4-13 of the Act.

You are therefore advised that the Open Public Meetings Act does not require a public body to provide "adequate notice" of a closed session provided that the public body, at a prior public meeting, has passed a resolution stating the specific items to be discussed in closed session. If the public body has not passed a resolution at a prior public meeting, then it must give "adequate notice" of the meeting to be held and, prior to going into closed session at that meeting, it must pass the required resolution.

Sincerely,

WILLIAM F. HYLAND

Attorney General

By: MICHAEL A. SANTANIELLO

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