

**The Chester Telegraph**  
P.O. Box 221 Chester, VT 05143  
802-875-2703

9 January 2018

Meg Alison Powden  
Superintendent  
Two Rivers Supervisory Union  
609 Vermont Route 103  
Ludlow, VT 05149

Dear Ms. Powden:

On Dec. 22, 2017, *The Chester Telegraph* sent you an email noting that the Green Mountain Unified School District had held an executive session that we believe was outside the exemptions provided by the Vermont Open Meeting Law.

In researching the issue, we have found that not only did the board meet in executive session for “personnel” reasons on Nov. 14, 2017, but the Finance Committee also held a meeting with an executive session on the same topic on Nov. 29, 2017. Another executive session was scheduled for Dec. 19, 2017, but that meeting ran long and it was postponed along with several other items.

In our Dec. 22 email, *The Telegraph* asked that the board and supervisory union explain what happened in that meeting and invited a response to our allegation. None has been received and there was no discussion of the situation on the monthly meeting agenda of Jan. 9, 2018.

So, Pursuant to 1 V.S.A. 310 et seq., ***this is a complaint*** alleging violations of the Vermont Open Meeting Law by the Board of Directors of the Green Mountain Unified School District and by its Finance Committee.

In chronological order, this is what we discovered:

**On Nov. 14, 2017**, at the regularly scheduled GMUSD meeting held at Chester-Andover Elementary School, Shawn Cunningham of this newspaper asked you how the new district could hold an executive session on a personnel matter since it does not yet hire, employ, evaluate, discipline or dismiss employees. Without further explanation, you responded that it was a personnel matter.

**Nov. 29, 2017** Finance Committee meeting was labeled as “FY 2019 Budget - Personnel.”

**Then at the Dec. 19, 2017** GMUSD meeting, Cunningham asked if the scheduled session was for the purpose of negotiating a labor contract, appointing or evaluating a public employee or officer or disciplining or dismissing an employee. You said it was not, but that the discussions revolved around dismissals that might arise from budgetary changes.

As we stated in our email, there are specific exemptions from the open meeting law (**1 VSA 310 - 313**) and whether any of those would cover such a session. There are three that might apply. Those are:

*1. (B.) labor relations agreements with employees;*

*3. the appointment or employment or evaluation of a public officer or employee, provided that the public body shall make a final decision to hire or appoint a public officer or employee in an open meeting and shall explain the reasons for its final decision during the open meeting;*

*4. a disciplinary or dismissal action against a public officer or employee; but nothing in this subsection shall be construed to impair the right of such officer or employee to a public hearing if formal charges are brought.*

Since the new board does not yet have employees and is not currently negotiating a labor agreement, the first exemption does not fit the bill.

The next two refer to specific actions regarding individuals. Note the indefinite article “a” connoting a single person. According to you, the nature of the session was a discussion of future staffing and the possible elimination of positions. This does not fall under any of the exemptions listed in 1 VSA 313.

*The Chester Telegraph* requests that the school district and supervisory union acknowledge affirmatively that its executive sessions of Nov. 14 and Nov. 29, 2017 were violations of the Open Meeting Law.

The cure envisioned in the law for such violations would be to hold an open session and discuss again the same issues as were discussed in the illegal executive session and undo any decisions that were made as a result. We believe that this would be overly time consuming in the run-up to Town Meeting Day. But we believe that a statement of what was discussed and notification to those in attendance that the discussion is not privileged and may be discussed with the public would suffice.

Also, the board and supervisory union should make an affirmative effort to get training on both the Open Meeting and the Public Records laws. The Vermont League of Cities and Towns can help with the training and SAPA-TV has copies of three presentations that VLCT's Garrett Baxter made here in Chester in recent years.

The board and the supervisory union should also put into place policies and procedures that will ensure that such violation will not occur again. These should include:

- 1.) clearly stating – on the agenda and in the open meeting - the purpose of the executive session in as much detail as can be given without putting any party at a “substantial disadvantage.” For example, something like “to discuss disciplinary action against an employee” gives enough information to make the purpose clear without disclosing anything sensitive.
- 2.) a motion to enter executive session to discuss a contract should state what the contract is for and with whom the board is contracting. The actual sensitive materials that are legally shielded from public view can be maintained while the public at least knows what its elected representatives are working on.

This should be the case for any of the matters listed under 313 (a)(1). For example, when entering into an executive session to discuss a legal matter involving the school, the nature of the

legal issue should be disclosed. While specific issues and strategy may be rightly withheld, the existence of a legal matter involving the school should not. According to VCLT attorney Garrett Baxter, “More details should be provided than not, so long as doing so does not undermine the basis for entering into executive session in the first place.”

- 3.) where there is to be a finding that a “premature general knowledge would clearly place the public body or a person involved at a substantial disadvantage” under 313(a)(1), the facts leading to that finding should be clear rather than simply stated as a pro-forma conclusion. To simply make a motion using the language of the statute without any other facts and without discussion puts the board in the position of voting on a motion blind.
- 4.) clearly stating that there is a time for public comment. This is often left off agendas.

Secretary of State Jim Condos has often said that public bodies should “err on the side of transparency,” and we believe that the public will put greater trust in representatives who do.

Cynthia L. Prairie  
Publisher  
*The Chester Telegraph*

cc: GMUSD Board  
Chris Winters, Deputy Secretary of State, State of Vermont