



UNION COUNTY PROSECUTOR'S OFFICE

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October 13, 2011

Tina Renna
Union County Watchdog Association
202 Walnut Avenue
Cranford, New Jersey 07016

**Re: Alleged Open Public Meetings Act Violation by Union County Freeholders
Appointment of County Manager Alfred Faella**

Dear Ms. Renna:

Please accept this letter in response to yours of August 17, 2011 asking that the Prosecutor's Office investigate whether the Union County Board of Chosen Freeholders violated *N.J.S.A. 10:4-12* of the Open Public Meetings Act regarding the appointment of Alfred Faella as Union County Manager on July 28, 2011. We have done so and have determined that there was no violation of the Act.

It is your contention that members of the Freeholders Board discussed this appointment at meetings that were not open to the public in violation of the Act based on the following quotes that appeared in the August 7, 2011 Star Ledger attributed to Freeholder Daniel Sullivan and in the July 27, 2011 Westfield Leader attributed to Freeholder Al Mirabella.

Freeholder Sullivan: "George [Devanney] has been talking about leaving for quite some time—the better part of the last few months or even a year ago. There have been any number of conversations the freeholders had, 'What if George leaves?' Every time we had those conversations, it all came back around to Al."

Freeholder Mirabella: "We have very strong internal candidates that we are going to take a look at initially."

After checking into the matter, our office has determined that these discussions occurred in passing between one or two freeholders after former County Manager George Devanney put in his pension

Tina Renna
Page 2
October 13, 2011

papers months prior to his official retirement and that none of them were conducted by a majority of the members of the public body in violation of *N.J.S.A.* 10:4-8.

You also noted that when you requested copies of any Freeholder emails regarding this appointment, the Clerk of the Board of Freeholders responded that there were no emails to provide and asked our office to issue guidelines directing members of the Freeholders Board on the use of personal email accounts to discuss public business. While we did not find that the Freeholders did anything wrong in this case, we have arranged to meet with Union County Counsel Robert Barry to establish guidelines for the use of email to discuss County business.

With respect to the appointment of Mr. Faella, the Prosecutor's Office has obtained the agendas as well as the minutes for the regular and executive sessions of the Union County Board of Chosen Freeholders' Agenda Setting Meeting of July 21, 2011 and the Freeholders Regular Meeting of July 28, 2011.

According to the executive session minutes for the July 21, 2011 Agenda Setting Meeting, under Personnel Matters, the guest was listed as Al Faella. The minutes read:

“The Board interviewed Mr. Alfred J. Faella, currently the Director of Parks & Community Renewal, for the position of County Manager. Mr. Faella's goals and initiatives were discussed. His resume is attached. Mr. Faella's appointment and salary resolution will appear on next week's agenda. His salary will be \$155,000.”

Thereafter, the published agenda for the July 28, 2011 Regular Freeholders Meeting listed Resolution 2011-706 as proposed by Chairman Scanlon and the Entire Board “appointing Alfred J. Faella as County Manager to serve at the pleasure of the Board of Chosen Freeholders and said services shall commence on August 1, 2011, at an annual salary of \$155,000.” The agenda for that meeting was made available to the public at approximately 12:52 p.m. on July 28, 2011. According to the minutes of that meeting you were in attendance and at the public comment portion of the meeting asked for an explanation on the process of replacing a County Manager. Vice Chairman Mirabella replied that “it was the Board's intent to hire from within to continue the direction and momentum of the County.” He stated that “we chose to interview Mr. Faella based on review of his resume. There is a salary savings.” No one in attendance at the public comment portion objected to Mr. Faella's appointment as County Manager.

There is no prohibition against the Board of Chosen Freeholders meeting in executive session to interview Mr. Faella for the position of County Manager. This decision involved the interview of a prospective replacement for an appointed position rather than a vacancy in an elective office. By its terms, the Open Public Meetings Act permits a public body to exclude members of the public from that portion of a public meeting at which the public body discusses the appointment and terms of employment of a prospective public officer or employee *N.J.S.A.* 10:4-12 b. (8).