



Judge tosses closed meeting lawsuit against Scotch Plains council

By Tracee M. Herbaugh/ For the Star-Ledger

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ELIZABETH -- A Superior Court judge dismissed a lawsuit filed by the Scotch Plains Democratic party chairman, who claimed the mayor and township council illegally closed a number of meetings to discuss the 2009 budget.

Richard Samuel, a Scotch Plains resident who filed the suit, asked the judge to overturn the council ordinances that created a sewage utility and approved the 2009 budget because the council discussed details in closed meetings.

By law, municipal governments are allowed to move into closed session if matters of personnel are discussed, such as laying off a specific position.

But, Samuel claimed some parts of the council's discussion on the budget and sewage authority are required by law to be held in open meetings.

In June, the council passed an ordinance that created a new utility to handle the \$2.5 million in annual sewage services that used to be a part of the municipal budget. The new utility charges individuals directly for their water use. Samuel claims there were at least three closed meetings about the utility around March 23, April 20 and after the June 9 session, and part of these discussions should have been in public.

Samuels also asked that Scotch Plains mayor Nancy Malool - a Republican - be thrown out of office for overstepping her authority by influencing the method by which former town manager Michael Capabianco presented the budget to the council.

On Friday, Superior Court Judge Karen Cassidy in Elizabeth dismissed the case in its entirety. Cassidy added that even if the budget and sewer utility were discussed in closed session, the council held more open public meetings before passing both ordinances, as required by state statute.

"All procedures the statute lays out concerning public meetings were followed by the defendants in this instance," said Cassidy.

Cassidy pointed to meeting minutes provided by the defendants, which showed public discussion on both the budget and sewer utility. Cassidy added that since the defendants had proof of meetings that were held before the ordinances were passed, they are complying with state open public records act, even if the council had discussed the issues in closed session previously.

Samuels also sought a proclamation from the judge stating the town council had a pattern of holding closed meetings, but Cassidy denied this request, too.

"It's clear that the township of Scotch Plains did not act in violation of the Open Public Meetings Act," she said.

Malool, who was in court with Scotch Plains township attorney Brian Levine, said she was pleased the case was dropped, though, not surprised.

"If people are unhappy with the party in power, this is not the way to remedy it," Malool said. "I'm concerned this was just another frivolous lawsuit that cost taxpayers a fair amount of money."

So far, the costs for the township total more than \$5,000 for the filing and attorney fees, according to township attorney Brian Levine.

Cassidy gave Samuels 45 days to appeal the decision. But Samuels said he is undecided if he will.

"I have to look into the judge's conclusions and review her decisions," he said. "The courts are always inclined to not allow cases like this to be pursued, and I think they should be."

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