

May 25, 2004

Teresa & Bob Mollette
1705 Franklin Blvd.
Portsmouth, Ohio 45662
Home: 740-353-0099
mollette@adelphia.net

To Whom It May Concern:

To preserve and encourage openness, the Ohio General Assembly passed the Open Meeting and Public Records acts, collectively known as the 'Sunshine Law'. So, I am requesting that an application for injunction be filled pursuant to our law documented in the 'Ohio Revised Code' (ORC) and in accordance with the 'Ohio Sunshine Law' against all proceeding that took place and enacted on May 29, 2002 at the regular scheduled City Council Meeting.

"A popular government without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy, or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power which knowledge gives." **James Madison 103 (G. Hunt ed. 1910)**

"Liberty cannot be preserved without a general knowledge among the people, who have a right... and a desire to know; but besides this, they have a right, an indisputable, divine right to that most dreaded and envied kind of knowledge, I mean of the characters and conduct of their rulers." **John Adams (1765)**

"A citizen's ability to evaluate government's effectiveness is one of the hallmarks of a democratic society." **Attorney General Jim Petro (2004 Ohio Sunshine Laws Update)**

ORC 733.56 Application for injunction.

"The village solicitor or city director of law shall apply, in the name of the municipal corporation, to a court of competent jurisdiction for an order of injunction to restrain the misapplication of funds of the municipal corporation, the abuse of its corporate powers, or the execution or performance of any contract made in behalf of the municipal corporation in contravention of the laws or ordinance(s) governing it, or which was procured by fraud or corruption."

ORC 733.57 Specific performance.

"When an obligation or contract made on behalf of a municipal corporation, granting a right or easement or creating a public duty, is being evaded or violated, the village solicitor or city director of law shall apply for the forfeiture or the specific performance thereof as the nature of the case requires."

ORC 733.58 Taxpayer as defendant in certain actions; intervention:

“If the village solicitor or city director of law, upon the written request of any taxpayer of the municipal corporation, makes any application provided for by section 733.56, 733.57 or 733.58 of the Revised Code, the taxpayer may be named as a party defendant and if so named shall have the right to assist in presenting all issues of law and fact to the court in order that a full and complete adjudication of the controversy may be had.

In any civil action or proceeding involving the public interest the court shall grant the application of any person to intervene if the court believes that the public interest will be better protected or justice will be furthered”

On May 29, 2002, Councilman Baughman, acknowledging a request from the Mayor, moved to add legislation providing for the issuance of \$2,000,000 City Hall Building Acquisition Bond Anticipation Notes.

There were no questions or comments. The motion carried via voce VOTE: ayes 5—nays 0. The legislation was added to the Agenda as Item “7k”

The Clerk gave a first reading to an ordinance providing for the issuance of \$2,000,000 City Hall Building Acquisition Bond Anticipation Notes by the City of Portsmouth, Ohio, in anticipation of the issuance of bonds and declaring an emergency. Two infractions occurred:

1) Declaring an Emergency:

Letter from City Solicitor David Kuhn read at March 22, 2004 regular session of Portsmouth City Council Meeting.

“Suspension of the rule’ is addressed in Section 10 of the City Charter, which provides, inter alia that ‘No ordinance shall be passed until it has been read on three separate days, unless the requirement of reading it on three separate days be dispensed with by a vote of not less than all of the members elected to Council less two, of the Council.’ The Charter fails to provide any criteria or guidelines as to which proposed ordinance is to be given three readings, and which may be passed on less than three readings, with a ‘suspension of the rules’ as provided in Section 10.

The policy of most City Councils is to give all ordinances three readings, unless there is some compelling reason to pass it with less than three readings. The determination is based upon the subject matter of the proposed ordinance, such as being an administrative or routine matter. Whether or not the subject matter of the proposed ordinance is an actual and real emergency, is not determinative of whether to pass the proposed ordinance with less than three readings. Of course, an actual and real emergency would be one of the appropriate reasons to pass a

proposed ordinance with less than three readings; however, the decision is entirely up to the policy of City Council.

According to the provision of the City charter, 'emergency legislation' pertains to the date upon which a passed ordinance or resolution shall take effect. It has nothing to do with whether the ordinance was passed on three readings or on less than three readings. Section 12 of the City Charter, provides that 'Appropriation ordinances, ordinance sand resolutions pertaining to local improvements and assessments, ordinances and resolutions providing for or directing any investigation of City affairs, resolutions requesting information from administrative officers or directing administrative action and emergency measures, shall be in effect from and after their passage by the Council, unless some other time be specified therein.' Section 12 further provides that 'All other ordinances and resolutions passed by the Council shall be in effect from and after thirty days from the date of their passage, except those in which a later date for taking effect is specified.'

One of the bases upon which a passed ordinance or resolution shall immediately take effect, is if it is an 'emergency measure' Section 12 defines an 'emergency measure' as 'an ordinance or resolution to provide for the immediate preservation of the public peace, property, health or safety.....' Section 12 further provides that 'No situation shall be declared an emergency by the Council, except as defined in this section, and it is the intention of this Charter that such definition shall be strictly construed....'

Therefore, in order for an ordinance to be validly declared an emergency, the subject matter must fall within the aforesaid definition, so that the ordinance will take effect immediately. Again, this has nothing to do with whether the ordinance was passed on three readings or on less than three readings."

- This letter from Solicitor David Kuhn, as stated in the letter, "According to the provision of the City charter, 'emergency legislation' pertains to the date upon which a passed ordinance or resolution shall take effect. It has nothing to do with whether the ordinance was passed on three readings or on less than three readings."
- The passage of an ordinance on less than three separate readings subject Ord. 2002-63, was never given an advance 24 hour notice to the public this violates the rights of the public, Section 25 of the Charter, that would take away the rights of citizens who disagree with the ordinance to file a referendum petition prior to the passed ordinance, due to the nature of above said ordinance applying to Section 20 of the City Charter, "The electors shall have a power to approve or reject at the polls any ordinance passed by the council, or submitted by the council to a vote of the electors, except an appropriation ordinance" The above mentioned ordinance 2002-63 is an appropriations ordinance.

2) Portsmouth City Charter Section 10 Legislative Procedure: “ The final reading of each ordinance shall be in full unless a written or printed copy thereof shall have been furnished to each member of the Council prior to such reading.

- The minutes of May 29, 2002 does not document the fact copies of said ordinance “2002-63” were distributed to the present members of council. If it's not documented it did not happen.

3) Rules for the Government of Council, Portsmouth, Ohio

- Section 15: Where the special interest or privilege of the citizens is involved or prejudiced. Suspension of the rules will be avoided until the citizens have had the opportunity to express themselves before council. Normal and reasonable endeavor will always be made to inform the citizens of any action that council is considering or contemplating.

Councilman Baughman moved to suspend the rule requiring an ordinance be read on three separate dates.

There were no questions or comments. The roll was called. VOTE: ayes 5—nays 0. The rule was suspended.

Councilman Baughman made a motion to pass the ordinance.

There were no questions or comments. The roll was called. VOTE: ayes 5—nays 0. The ordinance was passed. ORD. #65-02.

**APPLICATION FOR INJUNCTION:
VIOLATION “OHIO SUNSHINE LAW”**

INVALIDITY: A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body. And even if the formal action is adopted in an Open Meeting, if it results from deliberations that occurred in a meeting not open to the public, its action's are still invalid, unless the deliberations were on a topic specifically permitted to be conducted in Executive Session. The ‘Portsmouth City Charter,’ Section 4 supersedes the ‘OHIO REVISED CODE’ “All meetings of the council and of committees thereof shall be open to the public, subject to the provisions of the Open Meeting Law of the Ohio Revised Code. However, a public body may not attempt to avoid a contractual obligation by claiming that approval of the contract was void under The Open Meeting Act.

“Furthermore, a formal action taken in a meeting for which notice was not properly given may also be invalid....”

- Advanced notice to the public was not given prior to the request/addition to the regularly scheduled agenda. The Open Meeting Act makes it clear that a notice provision was not followed. The Open Meetings Act itself makes clear that violation of the notice provisions of the act subjects the body to the invalid action penalty.

I am requesting petition of the above injunction be filled and acknowledgement of this injunction be documented prior to 5/26/04—TIME IS OF THE ESSENCE DUE TO SECTION 2. REMEDIES AND RAMIFICATIONS OF THE OPEN MEETING ACT 'SUNSHINE LAW'

Section 2: Remedies and Ramifications.

a. Court Action.

If a person believes that the Open Meetings Act has been violated, that person may file a court action called an injunction, which, if granted, will compel the members of the public body to comply with the law. Any person may file an injunction to enforce the Open Meeting Act, **and the action should be filed in the court of common pleas for the county where the meeting at issue took place within two years or the violation or alleged violation.**

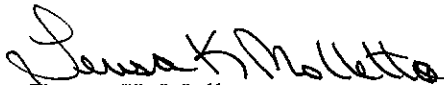
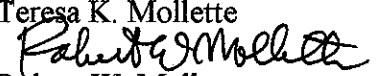
To prevail in an injunction action, the filing party must demonstrate the legal elements of irreparable harm and prejudice to the filing party. However, if the filing party proves that the public body violated or threatened to violate the Open Meeting Act, the court will conclusively and irrebuttably presume these elements, which relieves the filing party from this responsibility. A "knowing" violation of an injunction may result in the removal from office of one or more members of the public body.

Once the court finds a violation of the Open Meeting Act, it must consider granting the injunction, regardless of the public body's subsequent attempt to cure the violation.

ORC 733.59 Suit by taxpayer

"If the village solicitor or city director of law fails, upon the written request of any taxpayer of the municipal corporation, to make any application provided for in sections 733.56 to 733.58 of the Revised Code, the taxpayer may institute suit in his own name, on behalf of the municipal corporation."

If above said request fails to the city director of law, City Prosecutor, Mark Kuhn, this documentation also holds true as Application for Injunction to the Common Pleas Courts.


Teresa K. Mollette

Robert W. Mollette