TOWN OF BROOKFIELD
SELECTMEN'S MEETING
TOWN HALL, BANQUET ROOM

MINUTES OF JANUARY 27, 2009

EXECUTIVE SESSION

Chairman James Allen called the meeting to order at 9:00 p.m. Other members present: Ronald Dackson and Rudy Heller.

Mr. Dackson moved to amend his motion to adjourn to Executive Session and adjourn immediately thereafter to include Reason #1 "To discuss the reputation, character, physical condition or mental health rather than the competence of an individual..." Mr. Heller seconded and Mr. Allen called for a roll call vote. Mr. Allen voted aye; Mr. Dackson voted aye; Mr. Heller voted aye; so voted.

Issue #1
This particular employee begun working for the Town is 2003, currently works part-time and is hospitalized. The matter came up because the Department Head did not realize that this employee did not qualify for sick days and they were included on the Payroll Warrant signed today. Two sick days were authorized by the Department Head.

Sick days are pro-rated according to Town By-law. The issue is that the employee has worked 19.75 hours on average per week since 2007 and the by-law stipulates a minimum of 20 hours per week are needed for sick days. The Board was concerned with setting a precedent as there is a possibly a second employee that could become eligible for this benefit.

Mr. Dackson moved to make no change to the Payroll Warrant of January 27, 2009 and to take into consideration subsequent action, as necessary; Mr. Heller seconded; Mr. Allen voted aye; Mr. Dackson voted aye; Mr. Heller voted aye; so voted.

Issue #2
This employee who is also out sick is a department head. The employee had told Mr. Allen verbally that he expects to be out until the end of February. Section 18. (Sick Leave with Pay) of the Town's By-laws state "If an employee needs an extended sick leave for medical reasons, (s)he must present a doctor's statement stating the amount of sick days that will be taken.". The Administrative Assistant had shown the by-law to the employee who had agreed to supply the information by Thursday, January 22, 2009; it has not been received as of this date although an e-mail had been received from the Department Head sent at 12:07 pm earlier this day (subject: Chain of Command). Chairman Allen was concerned that the Board did not have enough information for them to react and had drafted a letter to be sent to the employee. Mr. Heller read the draft letter aloud and it was revised by the Board.

Mr. Dackson moved to send the revised letter to the employee; Mr. Heller seconded; Mr. Allen voted aye; Mr. Dackson voted aye; Mr. Heller voted aye; so voted.

ADJOURNMENT:

At 9:26 pm Mr. Dackson moved to adjourn the Executive Session; Mr. Heller seconded; Mr. Allen voted aye; Mr. Dackson voted aye; Mr. Heller voted aye; so voted.

Respectfully submitted,

Donna L. Neylon
Administrative Assistant

Date Approved by Board: _____

Released ~~6/5/2009~~
2/10/2009

JOSEPH D. EARLY, JR.
DISTRICT ATTORNEY

COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE
DISTRICT ATTORNEY
MIDDLE DISTRICT

WORCESTER COUNTY COURTHOUSE
WORCESTER, MASSACHUSETTS 01608
www.worcesterda.com

TELEPHONE
755-8601
AREA CODE 508

March 5, 2009

RECEIVED
MAR 09 2009
BOARD OF SELECTMEN

James Allen, Chairman
Brookfield Board of Selectmen
Municipal Building
6 Central Street
Brookfield, MA 01506

Dear Chairman Allen:

The District Attorney's Office has received a written complaint alleging a violation of the Open Meeting Law by the Brookfield Board of Selectmen by convening in executive session on January 27, 2009 to discuss an individual's medical condition without notice to the individual involved.

Please be advised that the District Attorney's Office has made no decision on this complaint but is in the process of investigating the same.

In order to assist our investigation, would you kindly forward a written response to the above allegation, as well as copies of the regular minutes and executive session minutes of the Board of Selectmen's meeting held on January 27, 2009. Your response can be forwarded by regular mail or by FAX to the number set forth below.

Please have these documents forwarded to my attention on or before Friday, March 13, 2009. If the executive session minutes have not been released to the public, we will not release these minutes without a court order, but only use the minutes for purposes of our investigation.

Upon completion of our investigation, we shall inform you of our decision. Thank you for your anticipated cooperation in this matter.

Very truly yours,

PATRICIA C. SMITH
Assistant District Attorney
Telephone: (508) 363-1881
FAX: (508) 363-1877

Brookfield Board of Selectmen

March 10, 2009

Patricia C. Smith, Assistant District Attorney
Worcester District Attorney's Main Office
225 Main Street, Room G-301
Worcester, MA 01608

TOWN OF BROOKFIELD
REPORT OF OPEN MEETING LAW VIOLATION

Dear Ms. Smith:

The Brookfield Board of Selectmen has received your letter dated March 5, 2009 indicating that your office had received a written complaint alleging a violation of the Open Meeting Law by the Brookfield Board of Selectmen by convening in executive session on January 27, 2009 to discuss an individual's medical condition without notice to the individual involved.

You may have a log of a telephone conversation resulting from a call by the Chairman of the Brookfield Selectmen, Mr. James Allen. Within a day or two of the January 27th Executive Session, he called your office and indicated to you that he felt that the Board may have inadvertently violated the Open Meeting Law. You recommended that he contact Town Counsel but felt that the Board needed to make the minutes of the January 27th meeting public.

Attached you will find a copy of the minutes of the January 27th Executive Session and the minutes of the Board's next meeting which was February 10, 2009 when the minutes of the Executive Session were released to the public.

Please let us know if there is anything further that the Board needs to do to satisfy the Open Meeting Law.

Sincerely,

BOARD OF SELECTMEN

Donna L. Neylon

Donna L. Neylon, Administration Assistant

Enclosures

COMMONWEALTH OF MASSACHUSETTS

Office of

District Attorney Joseph D. Early, Jr.

Worcester County Courthouse
225 Main St. G301 Worcester, MA 01608
www.worcesterda.com

Worcester County
(Middle District)
(508)-755-8601

April 29, 2009

James Allen, Chairman
Brookfield Board of Selectmen
Municipal Building
6 Central Street
Brookfield, MA 01506

RECEIVED
APR 30 2009
BOARD OF SELECTMEN

Dear Chairman Allen:

As previously advised, the District Attorney's Office received a written complaint alleging a violation of the Open Meeting Law by the Brookfield Board of Selectmen by convening in executive session on January 27, 2009 to discuss an individual's medical condition without notice to the individual involved.

A review of the January 27, 2009 regular and executive session minutes indicates that a Motion was made by Selectman Ronald Dackson to enter into executive session "to discuss health of employees and to adjourn immediately thereafter. . . " The Motion was seconded by Selectman Rudy Heller. The regular session minutes further state as follows:

> "(Note: At the beginning of the Executive Session, to avoid any confusion, the members each voted "aye" to conduct the Executive Session and to adjourn immediately thereafter.)"

The executive session minutes indicate that Selectman Dackson subsequently "moved to amend his motion to adjourn to Executive Session and adjourn immediately thereafter to include Reason #1 'To discuss the reputation, character, physical condition or mental health rather than the competence of an individual. . .'" Selectman Heller seconded, and a unanimous roll call vote was then taken.

Massachusetts General Laws Chapter 39, Section 23B, the Open Meeting Law, specifically sets forth the procedure for entering into executive session as follows:

> "No executive session shall be held until the governmental body has first convened in an open session for which notice has been given, a majority of the members have voted to go into executive

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session and the vote of each member is recorded on a roll call vote and entered into the minutes, the presiding officer has cited the purpose for an executive session, and the presiding officer has stated before the executive session if the governmental body will reconvene after the executive session."

Clearly, the above procedure for properly entering into executive session was not followed in this instance.

The Open Meeting Law further states that an executive session may be held for the following purpose:

"(1) To discuss the reputation, character, physical condition or mental health rather than the professional competence of an individual, provided that the individual involved in such executive session has been notified in writing by the governmental body, at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

(a) to be present at such executive session during discussions or considerations which involve that individual.

(b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation in said executive session.

(c) to speak in his own behalf."

Upon review of the executive session minutes, it is the opinion of the District Attorney's Office that the Brookfield Board of Selectmen flagrantly violated the Open Meeting Law by failing to notify the individual involved of the executive session, thereby depriving the individual involved of his rights as set forth above. I have reviewed the minutes of the February 10, 2009 meeting of the Board of Selectmen which indicate that the January 27, 2009 executive session minutes have been released to the public. In light of this remedial action, no further action will be taken by the District Attorney's Office at this time. However, the Board is strongly advised to strictly adhere to the provisions of the Open Meeting Law in the future.

Thank you for your cooperation during the investigation of this matter. If you, or any member of the Brookfield Board of Selectmen, have any questions concerning this letter, please do not hesitate to contact me.

Very truly yours,

Patricia C. Smith
Assistant District Attorney
Telephone: (508) 363-1881

TOWN OF BROOKFIELD
SELECTMEN'S MEETING
TOWN HALL, BANQUET ROOM

MINUTES OF FEBRUARY 10, 2009

REGULAR SESSION

Chairman James W. Allen called the meeting to order at 6:30 p.m. Other members present: Ronald J. Dackson and Rudy Heller.

Camera Operator: John David Holdcraft

Press: Taryn Plumb, David Dore

Public: Barbara Wilson

APPROVAL OF WARRANT:

Mr. Heller moved to approve the Payroll Warrant of February 10, 2009 in the amount of $167,483.87; Mr. Dackson seconded. During discussion Mr. Heller pointed out a concern that he had with a particular payroll item. He said that according to the time sheet submitted, there was no indication that sick time is involved. He amended his motion to include approving the Payroll Warrant "pending verification of sick time". Mr. Dackson agreed that the particular individual should be asked to provide the necessary signatures and to correct the payroll record to indicate sick time taken on the time sheets; this included the payroll period of February 10th and the previous period.

The motion as voted: To approve the Payroll Warrant of February 10, 2009 in the amount of $167,483.87 pending verification of sick time; Mr. Dackson seconded; so voted.

APPROVAL OF MINUTES:

Mr. Dackson moved to approve the minutes of January 27, 2009 (regular session) with Mr. Heller's amendments of changing "ZBA" to "ZBO" in the section discussing the requested Class II license; Mr. Heller seconded; so voted.

Mr. Dackson moved to approve the minutes of February 3, 2009; Mr. Heller seconded; so voted.

Mr. Dackson moved to approve the January 27, 2009 Executive Session minutes; Mr. Heller seconded. During discussion, Mr. Allen pointed out that following this meeting he had had reservations about the meeting being an Executive Session and he had called Assistant District Attorney Patricia Smith for her opinion. She explained to him that the meeting should have been Executive Session with the persons who were discussed invited with a minimum of 48 hours