

MINUTES OF A REGULAR CAUCUS  
MEETING OF COUNCIL OF THE  
BOROUGH OF SOUTH TOMS RIVER

A Regular Caucus Meeting of Council of the Borough of South Toms River was held at the Borough Hall on Monday, January 14, 2013 at 7:00 pm.

Those present were Mayor Champagne; Councilmen Cradle, Handshy, Reevey, Sykes, Williams. Also present Solicitor Tarver.

Absent: Councilman Murray

Notice of this meeting was given to the Asbury Park Press on December 6, 2012 and notices were posted on the bulletin boards in the Clerk's Office and Meeting Room on said date.

Mayor Champagne presented certificates to the following "Students of the Month" from South Toms River Elementary School for the month of October: Jayden Diaz, Donovan Wilkinson, Tyler DiBenedetto, Mi'Kayala Brooks, Brody Pomeroy, Mario McCoy, Emily Cushing, Noah Julius, Melanie Armijos, Luis Lopez, Marley Cradle, Jada Milligan, Rosa Montes Ponce, Andrew Harker, Ruby Miranda, Byran Sanchez, Bianca Rivera, Neftali Dorn, Mekhis Jacobs, Julian Sabella-Vitale.

Dr. Douglas Ripley spoke to the children about being a doctor of bones and working on nerves. He told the children to work hard, go to school and eat their vegetables.

A motion was made by Councilman Cradle seconded by Councilman Reevey for a brief recess.

The following roll call was taken: FOR: Councilman Cradle, Handshy, Reevey, Sykes, Williams ABSENT: Murray

When the Governing Body came back from recess, the following roll call was taken: PRESENT: Councilman Cradle, Handshy, Reevey, Sykes, Williams ABSENT: Murray

Mayor Champagne went over the agenda for the meeting of January 22, 2013, which is as follows: Moment of silence, Salute to flag, Notice of meeting, Roll call, Approval of the following minutes:, Ordinances, Resolutions, Permission, Appointment, Reading & approval of vouchers for payment, Other business, Monthly reports, Correspondence, Public Comments, Executive Session, Adjournment.

A motion was made by Councilman Cradle seconded by Councilman Handshy to approve the following resolution:

RESOLUTION ADOPTING 2013 TEMPORARY BUDGET

WHEREAS, in the normal operations of the Borough of South Toms River it is necessary for the making of contracts, commitments and payments prior to the adoption of the regular budget, and

WHEREAS, N.J.S. 40A:4-19 of the State of New Jersey provides the Governing Body of any municipality may make temporary appropriations to provide for any contacts, commitments or payments to be made between the beginning of the budget year and adoption of the final budget, and

WHEREAS, the total amount of the appropriations attached hereto and made a part thereof in the amount of \$976,231.00 does not exceed twenty-six and one-quarter (26.25) percent of the Local Budget Appropriations of the Borough of South Toms River for the year 2012, exclusive of any 2012 appropriations made for Debt Service and Capital Improvement Fun, and exclusive of 2013 Debt Service Appropriations.

NOW, THEREFORE IT RESOLVED by the Borough Council of the Borough of South Toms River, County of Ocean, that the attached Temporary Budget for the year 2013 be adopted. BE IT FURTHER RESOLVED that a copy of the within be forwarded to the following:

1. Director of Finance
2. Borough Auditor

The following roll call was taken: FOR: Councilman Cradle, Handshy, Reevey, Sykes, Williams ABSENT: Murray

A motion was made by Councilman Sykes seconded by Councilman Williams to approve the following resolution:

RESOLUTION OF THE BOROUGH OF SOUTH TOMS RIVER, COUNTY OF OCEAN, STATE OF NEW JERSEY, VACATING RESOLUTION 37-10

WHEREAS, the prior governing body of the Borough of South Toms River adopted Resolution 37-10 on or about March 8, 2010, authorizing the former Mayor to review and approve requests for overtime by the Borough Clerk;

WHEREAS, Resolution 37-10 provided that the Borough Clerk was not an exempt employee under the Fair Labor Standards Act;

WHEREAS, the Mayor and Council are desirous of vacating Resolution 37-10 and defining the Clerk's duties, responsibilities and compensation by contract for all matters arising in the future; NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of South Toms River, county of Ocean, State of New Jersey, as follows:

1. Resolution 37-10 be and hereby is vacated.
2. The duties, responsibilities and compensation of the Borough Clerk shall be governed by ordinance and any subsequent contractual agreements entered into between the Borough and the Borough Clerk.
3. A certified copy of this Resolution shall be sent to (1) the Borough Clerk, (2) Mayor and all members of Council.

The following roll call was taken: FOR: Councilman Cradle, Handshy, Reevey, Sykes, Williams ABSENT: Murray

A motion was made by Councilman Reevey seconded by Councilman Cradle authorizing the Borough Clerk to work the Borough's Rabies Clinic on January 26, 2013.

The following roll call was taken: FOR: Councilman Cradle, Handshy, Reevey, Sykes, Williams ABSENT: Murray

Mayor Champagne stated that he received a letter from James Richardson with his resume attached for Zoning and Code Enforcement Officer.

Solicitor Tarver stated, "Just so you know, with regard to the Code Enforcement position, there is a certification that's proffered by the State for Code Enforcement Officials. However, it is not necessary that in this size Borough, I believe, that that position have that. I was waiting for an opinion to come from DCA. I actually spoke to DCA yesterday. So, as I understand it, at least at this juncture, and I'll certainly have a definitive answer for you once we go forward, there is a certification for Code Enforcement Officials. It may not be necessary for this particular Borough."

A motion was made by Councilman Reevey seconded by Councilman Cradle to table the appointment of the Code Enforcement Officer to make sure if a certification is required for the position and that the applicant is properly qualified and has the necessary certification.

The following roll call was taken: FOR: Councilman Cradle, Handshy, Reevey, Sykes, Williams ABSENT: Murray

A motion was made by Councilman Cradle seconded by Councilman Reevey to enter into Closed Session for a litigation matter.

The following roll call was taken: FOR: Councilman Cradle, Handshy, Reevey, Sykes, Williams ABSENT: Murray

Public Comments:

Sandford Ross, 16 Hummel Drive – A little surprised at resolution regarding Borough Clerk's exempt status proceeded considering the fact that the attorney fully explained that Federal law and regionality will supersede any resolution that will be passed. Her being exempt or not exempt, which we discussed at length in December is defined by Federal law and the resolution really doesn't have an impact. It did several years ago when we passed it.

Solicitor Tarver stated, "Yes and no. The problem is that Federal law is what it is. The problem is that the resolution seeks to define Federal law for the municipality and it does so in a wrong fashion, not issuing the standards of the Federal Fair Labor Standards Act. There are actually two (2) problems...You have the Federal Fair Labor Standards Act which codifies exempt and non-exempt employees. You have the Civil Service regulations of the State of New Jersey which act in accordance with that and also buttress the idea that it's not an exempt status and what you cannot do as a municipality, you cannot perform or do an act as Council which is contrary to State statute. You certainly cannot do it (could not make out). So when we have a knowing act, a knowing ordinance that's improper, the proper thing to do is to rescind it and not let it just stay there, that's why the action had to be taken. You just can't let it stay there because what you've actually done is you've acquiesced in an improper act."

Sandford Ross – Didn't the wording of the resolution define her status as the opposite the previous ordinance did?

Solicitor Tarver, "Not exactly."

Sandford Ross – It was improper several years ago when we passed the ordinance defining who was exempt. It's just as improper defining her as not exempt.

Solicitor Tarver, "The revision does not define. The revision just says we rescind that. So, however it's defined is rescinded. The resolution does indicate that as per the Federal Fair Labor Standards Act, the position of Municipal Clerk doesn't meet those standards."

Sandford Ross – Second question is a follow-up to that contract we passed in December...Has it been finalized?

Mayor Champagne, "It cannot be discussed in Open Session."

Sandford Ross – I understand that the other contract that you passed in the latter quarter of last year was changed before it was signed and after we passed it.

Mayor Champagne, "We cannot discuss that, sir."

Solicitor Tarver stated that as it was an employment matter and could not be discussed in Open Session.

A motion was made by Councilman Cradle seconded by Councilman Reevey to adjourn this meeting.

The following roll call was taken: FOR: Councilman Cradle, Handsby, Reevey, Sykes, Williams ABSENT: Murray

Approved:

Joseph M. Champagne, Jr., Mayor

Elizabeth Silvestri, Clerk