

RESOLUTION NO. 2407

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, ACCEPTING THE PAYSON TOWN COUNCIL OPEN MEETING LAW INVESTIGATION FINDINGS, CONCLUSIONS AND PROPOSED REMEDY PROMULGATED BY THE ARIZONA ATTORNEY GENERAL AND DATED JUNE 26, 2008.

WHEREAS, on June 26, 2008, the Arizona Attorney General promulgated the Payson Town Council Open Meeting Law Findings, Conclusions, and Proposed Remedy (the "Report"); and

WHEREAS, the Mayor and Common Council of the Town of Payson have received a copy of the Report and reviewed the same; and

WHEREAS, the Mayor and Common Council of the Town of Payson desire to accept the Report and to comply with the remedy and resolution of the matter set forth therein,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. That the Mayor and Common Council of the Town of Payson, Arizona hereby accept the Report of the Arizona Attorney General dated June 26, 2008, a copy of which is attached hereto, marked Exhibit "A" and made a part hereof by this reference.

Section 2. That the Town of Payson be and is hereby authorized to comply with the proposed remedy contained in the Report.

Section 3. That the Town of Payson is authorized to take such other further actions as are necessary or appropriate to implement the remedy proposed in the Report in compliance with the Arizona Open Meeting Laws.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this \_\_\_\_ day of \_\_\_\_\_, 2008, by the following vote:

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSTENTIONS \_\_\_\_\_ ABSENT \_\_\_\_\_

\_\_\_\_\_  
Kenny J. Evans, Mayor

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ATTEST:

APPROVED AS TO FORM:

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Silvia Smith, Town Clerk

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Samuel I. Streichman, Town Attorney



Terry Goddard  
Attorney General

Office of the Attorney General  
State of Arizona

Elizabeth Campbell  
Assistant Attorney General

June 26, 2008

Samuel I. Streichman  
Payson Town Attorney  
303 N. Beeline Hwy.  
P.O. Box 606  
Payson, Arizona 85547-0636

**Re: Payson Common Council Open Meeting Compliance**

Dear Mr. Streichman:

As you know, this office received and investigated a complaint alleging that the Payson Common Council violated the Arizona Open Meeting Laws (A.R.S. § 38-431 *et seq.*) with regard to a lunch that occurred on August 29, 2007, and possible telephone polling by Mayor Edwards and Councilwoman Connell with regard to abolishing the HR Director position. I have interviewed former Mayor Edwards and Council members Connel and Wilson with regard to these allegations. In addition, I have reviewed the agenda, minutes, and video of the Council's September 6 and 20, 2007 meetings. I have concluded my review and my findings are as outlined below.

1. Telephone Poling.

After completing the interviews listed above, nothing was found to substantiate this allegation.

2. Improper Lunch Meeting.

The Council had lunch at Pasta Pomodoro Restaurant in Scottsdale, Arizona on August 29, 2007. At that lunch, town business was discussed. Specifically, the job performance of the Town Manager and the Town HR Director. In addition, the Council discussed terminating the HR Director position and moving those job responsibilities under the Finance Department.

All meetings of a public body shall be public, and all legal action of a public body shall occur during a public meeting. A.R.S. § 38-431.01(A). All discussions, deliberations, considerations, or consultations among a majority of the members of a public body regarding matters that may foreseeably require final action or a final decision by the governing body constitute "legal action" and, therefore, must be conducted in a public meeting or executive session in accordance with the Open Meeting Law. Ariz. Att'y Gen. Ops. 75-8, I79-4. See also A.R.S. §§ 38-431.01(A), -431(3).

**EXHIBIT "A"**

Because employment matters related to the Town Manager and Town HR Director were matters that could and would come before the Council, the Council's discussion of these matters at the lunch constituted legal action by a public body. Similarly, the Council's lunch discussion regarding terminating the HR Director position and moving those job responsibilities under the Finance Department were matters that could and would come before the Council constituted legal action. As a result, the Council violated the Open Meeting Law at the August 29, 2007, lunch.

3. The Agenda for the September 6, 2007, Meeting Failed to Include an Item on Which the Council Took Action.

The Council agenda for the September 6, 2007, meetings stated as follows with regard to the Town Manager's position:

2. Discussion/possible action re: Resignation of the Town Manager.

From a review of the video of the September 6, 2007, Council meeting, the Council did accept the resignation of the Town Manager. In addition, however, the Council accepted a separation agreement between itself and the Town Manager. The Council's consideration of and action on this separation agreement was not agendized.

The agenda for a public meeting must contain a listing of the "specific matters to be discussed, considered or decided at the meeting." A.R.S. § 38-0431.02(H). The public body may discuss, consider or make decisions only on matters listed on the agenda and other matters related thereto. *Id.* Accepting a resignation is a different matter than accepting a separation agreement. The public reading the agenda would not have understood that the Board was also considering a separation agreement, which included a severance package. As a result, the Council's failure to agendize the discussion and action on the separation agreement was a violation of the Open Meeting Law.

4. The Minutes for the September 6 and 20, 2007, Meetings Were Inadequate.

The minutes of a public meeting must contain an accurate description of all legal actions proposed, discussed or taken, and the names of the members who proposed each motion. A.R.S. § 38-431.01(B)(4). The minutes must also include the names of the persons, as given, making statements or presenting material to the public body and a reference to the legal action about which they made statements or presented material. *Id.*

In the September 6, 2007, meeting, a separate motion was made, seconded, and voted upon to approve the Town Manager's separation agreement. The minutes of that meeting fail to contain a mention of the separation agreement or the motion by which it was approved.

Also in the September 20, 2007, meeting, Council member Wilson moved that the Council table the matter of abolishing the position of HR Director to allow time for study. Even though this motion died for lack of a second, the motion still should have been included in the minutes.

In addition, the Council asked for and received comment on abolishing the HR Director position from Debra Galbraith, Chief Fiscal Officer. However, Ms. Galbraith's contribution to the meeting was not included in the minutes.

### Remedy

OMLET proposes the following to resolve this matter:

1. Acceptance of the Report. At the next regularly scheduled Council meeting, the agenda shall include the item "Payson City Council Open Meeting Law Investigation Findings, Conclusions and Proposed Remedy" ("Report").<sup>1</sup> At that meeting, the Council shall discuss the results of this investigation and vote on whether to accept the Report.<sup>2</sup> Acceptance of the Report will be evidenced by the Council's approved motion to accept the Report.

2. Certification of Compliance. The Council must certify compliance with the Open Meeting Law to the Open Meeting Law Enforcement Team of the Attorney General's Office. The Council's certification of compliance shall be submitted on or before the 15th day of March, June, September and December of each year, beginning on or before September 15, 2008, and ending September 15, 2010.

3. Training. All Council members and Council staff who assist with Open Meeting compliance shall attend an Open Meeting Law training session within six (6) months of the acceptance of the Report. This training must be at least one (1) hour in length and must be provided by a source independent from the Town of Payson and approved by OMLET prior to the training session. Materials for the Open Meeting Law training session must also be approved by OMLET prior to the training session.

Please let me know by August 15, 2008, if the Board agrees to the terms set forth above. We are hopeful that this letter and Consent Agreement will resolve this matter, but we are prepared to take further enforcement action in the event that the Council does not agree to this resolution.

If you have any questions, please contact Assistant Attorney General Joy Hernbrode at (602) 542-8342, as I will be on leave until September 22, 2008.

Sincerely,



Elizabeth A. Campbell  
Assistant Attorney General  
Open Meeting Law Enforcement Team

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<sup>1</sup> This letter constitutes the Report.

<sup>2</sup> While Council members Rick Croy, Michael Hughes, and Mayor Kenny Evans were not on the Council during the time covered by the investigation, they are being directed to participate in training and other requirements so that all current members of the Council have the same knowledge and understanding of the requirements of the Open Meeting Law.

Letter to Samuel I. Streichman

June 26, 2008

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cc: Joy L. Hernbrode, Coordinator Meeting Law Enforcement Team  
Glenn W. Smith, Complainant

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