

CHARTER TOWNSHIP OF FLUSHING

6524 N. SEYMOUR ROAD

FLUSHING, MICHIGAN 48433

SPECIAL BOARD OF TRUSTEES

DATE: OCTOBER 19, 2007

TIME: 5:00 P.M.

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WEB PAGE: <http://www.flushingtowship.com>

ADMINISTRATION MEMBERS

SUPERVISOR: Andrew Trotogot

CLERK: Julia A. Morford

TREASURER: Carl G. Liepmann

TRUSTEES

Ann L. Fotenakes

Scott Minaudo

Barry Pratt

Ida M. Reed

TOWNSHIP ATTORNEY:

Steven Moulton of

Cooley Moulton & Smith

Attorneys at Law

MEETING CALLED TO ORDER at 5:00 by **SUPERVISOR ANDY TROTOGOT** with roll call and the pledge to the American Flag.

ROLL CALL: Trotogot, Morford, Liepmann, Pratt, Fotenakes, Minaudo, Reed, and Attorney Steve Moulton

MEMBERS ABSENT: None

OTHERS PRESENT: Pat Drozdowski, Shaun Borowiz, Joan Pajtas, James Kinee, and William Noecker

NEW BUSINESS

1. Legal Opinion from Attorney Steve Moulton

The Special Meeting was called by Trustees Scott Minaudo (Minaudo) and Ann Fotenakes (Fotenakes) for today, Friday, October 19, 2007, at 5:00 p.m. for the purpose of either granting or denying all Board of Trustees access to the Flex Time information for Flushing Township Police Chief Doug Kennedy (Chief Kennedy).

ATTORNEY STEVE MOULTON (ATTORNEY MOULTON) stated as a result of the called Special Meeting Request, a Notice had been posted regarding the Special Meeting. A quorum of the Board of Trustees was present at the meeting.

ATTORNEY MOULTON has researched the law relevant to the request. A Memorandum dated October 19, 2007 had been faxed from Attorney Moulton to Supervisor Trotogot with the intention that every Board Member would receive a copy of the Memorandum. The Memorandum detailed the Michigan Freedom of Information Act (FOIA) that provided for the disclosure of 'public records' in the possession of a 'public body.'

TROTOGOT stated that at no time has any Board of Trustee been denied the opportunity to review the material in question; the only thing that was mentioned was that the material could not be copied and taken out of the township office.

LIEPMANN MOVED, seconded by Reed that Mr. Minaudo and all Township Board Members are allowed to view any and all written information that is available legally within the Township Police Department and those copies may not be removed from the premise where those copies may contain privilege information as described in the Opinion presented at this meeting by Attorney Moulton. Attorney Moulton's Opinion is the sole basis of the motion and the information contained therein as a part of this motion.

DISCUSSION:

- Will the Chief be paid overtime?
- According to Federal Employees Laws, since the Chief is not on salary and the Chief works over forty (40) hours in a week, the township would have to pay the Chief.

ATTORNEY MOULTON stated the Chief's position was strictly an administrative position. It could be a salary position; the township over time has de facto moved into that. **ATTORNEY MOULTON** had suggested and had been recommended to the Personnel Committee was to recognize what was actually occurring. The executive position should be placed in a written agreement on a salary basis which would avoid the appearance of violation of the Federal Fair Labor Standards Act.

- Could the Chief volunteer his time if on an hourly wage?

ATTORNEY MOULTON stated the situation was similar to a previous employee who had a position where there was a job where both jobs were hourly positions. Job 1 worked forty (40) hours; Job 2 was a different job description and had been worked twenty (20) hours. Under the Federal Fair Labor Standards Act, they did not care that it was the same employee paid on an hourly basis for which the time was crunched together and if the time exceeded forty (40) hours a week or more than eight (8) hours in a day, overtime had to be paid. The Federal Fair Labor Standards Act specifically indicated that for executive positions (the requirements are defined) if the Police Chief met every one of the requirements, the position could be put on a salary basis. Volunteering Time is eliminated in a salary position; also there isn't any overtime consideration. In every township and small city, the majority of Police Chiefs are on a salary basis.

- According to an MTA report, when the Police Chief reports were reviewed, the Flushing Township Police Chief was the only Police Chief that wasn't on salary.

ATTORNEY MOULTON stated that anything that was clearly subject to the Freedom of Information Act (FOIA) it would be available to anyone. FOIA doesn't make a distinction; if someone was entitled to the information under FOIA, then the person would be entitled to copies. The initial analysis was if the information was clearly subject to disclosure under FOIA? The answer was "no" because there were a number of exceptions that might apply. FOIA doesn't give a clear answer. It would take hours to go through the records to determine if the information was an exception to disclosure and to make notions to what provisions applied, the reasons of why it applied, and then weigh the benefit to the public in allowing disclosure to benefit and the detriment in not allowing disclosure. Hours would be involved in the procedure.

The Board is not considered the General Public and the laws are clear the Trustees have a fiduciary responsibility to administer the township with regards to the public which oversees the responsibility of the Police Department and the Board is entitled to know what is going on in the Police Department.

- Are the police officers "dailies" subject to review under FOIA?

ATTORNEY MOULTON stated it depended upon what was on the daily on that particular day; the daily was only an entry of time and not sure there would be an exception to the daily. Two (2) of the key exceptions to FOIA pertain solely to Police Departments (per the Memorandum – S and D) so if the daily included any of the below listed information that might address that type of information, it would not be automatic to disclosure.

MCL 15.243(1)(s) states:

- (s) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would do any of the following:
 - (i) Identify or provide a means of identifying an informer.
 - (ii) Identify or provide a means of identifying a law enforcement undercover officer or agent or a plain clothes officer as a law enforcement officer or agent.
 - (iii) Disclose the personal address or telephone number of law enforcement officers or agents or any special skills that they may have.
 - (iv) Disclose the name, address, or telephone numbers of family members, relatives, children or parents of law enforcement officers or agents.
 - (v) Disclose operational instructions for law enforcement officers or agents.
 - (vi) Reveal the contents of staff manuals provided for law enforcement officers or agents.
 - (vii) Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents, or those who furnish information to law enforcement departments or agencies.
 - (viii) Identify or provide a means of identifying a person as a law enforcement officer, agent, or informer.
 - (ix) Disclose personnel records of law enforcement agencies.
 - (x) Identify or provide a means of identifying residences that law enforcement agencies are requested to check in the absence of their owners or tenants.

ATTORNEY MOULTON recommended that if the Board felt certain information was necessary to effectively administer the Police Chief’s job, there should be a policy in effect telling exactly what the Board would like for the Chief to do in the future. (Check the *Charter Township of Flushing Policies and Procedures Administrative Manual*, page 10, page 40, page 43, page 73, - Per the Supervisor, the Police Chief comes under the Policies and Procedures Manual of the Police Department).

REVIEW OF CONCERNS:

- What information could and could not be given to the Board of Trustees (This was answered per the Opinion of Attorney Moulton).
- If the Chief of Police worked over forty (40) hours does the township have to pay overtime? (The Chief will not be paid overtime).

ACTION OF THE BOARD:
MOTION CARRIED.

THE NEXT BOARD OF TRUSTEES MEETING IS SCHEDULED FOR THURSDAY, NOVEMBER 8, 2007 AT 7:00 P.M.

ADJOURNMENT: TROTOGOT adjourned the meeting at 5:40 p.m.

JULIA A. MORFORD, Clerk

ANDREW TROTOGOT, Supervisor

APPROVED DATE: _____