

--- N.Y.S.2d ----, 2012 WL 266449 (N.Y.A.D. 4 Dept.), 2012 N.Y. Slip Op. 00623
(Cite as: 2012 WL 266449 (N.Y.A.D. 4 Dept.))

Supreme Court, Appellate Division, Fourth Department, New York.

In the Matter of David **ZEHNER**, Petitioner–Plaintiff–Respondent,

v.

BOARD OF EDUCATION OF JORDAN–ELBRIDGE CENTRAL SCHOOL DISTRICT, Respondent–Defendant–Appellant.

Jan. 31, 2012.

Background: In hybrid Article 78 proceeding and declaratory judgment action alleging that school district's board of education engaged in a pattern of violating the Open Meetings Law, board appealed from order of the Supreme Court, Onondaga County, [Donald A. Greenwood](#), J., which granted the petition and awarded attorney fees in favor of petitioner.

Holdings: The Supreme Court, Appellate Division, held that:

(1) the board violated the Open Meetings Law, and
(2) trial court was within its discretion in awarding attorney fees to petitioner.

Affirmed.

West Headnotes

[1] Schools 345 57

[345](#) Schools

[345II](#) Public Schools

[345II\(C\)](#) Government, Officers, and District Meetings

[345k51](#) District Boards

[345k57](#) k. Meetings. [Most Cited Cases](#)

School district's board of education violated the Open Meetings Law, where it merely recited statutory categories for going into executive session without setting forth more precise reasons for doing so. [McKinney's Public Officers Law § 103\(a\)](#).

[2] Administrative Law and Procedure 15A 124

[15A](#) Administrative Law and Procedure

[15AII](#) Administrative Agencies, Officers and Agents

[15Ak124](#) k. Meetings in General. [Most Cited Cases](#)

The purpose of the Open Meetings Law is to prevent public bodies from debating and deciding in private matters that they are required to debate and decide in public, that is, deliberations and decisions that go into the making of public policy. [McKinney's Public Officers Law § 100 et seq.](#)

[3] Schools 345 126

[345](#) Schools

[345II](#) Public Schools

[345II\(J\)](#) Actions

[345k126](#) k. Costs. [Most Cited Cases](#)

Trial court was within its discretion in awarding attorney fees to petitioner, in hybrid Article 78 proceeding and declaratory judgment action alleging that school district's board of education engaged in a pattern of violating the Open Meetings Law. [McKinney's CPLR 7801 et seq.](#); [McKinney's Public Officers Law § 107\(2\)](#).

The Law Firm of Frank W. Miller, East Syracuse ([Frank W. Miller](#) of Counsel), for Respondent–Defendant–Appellant.

O'Hara, O'Connell & Ciotoli, Fayetteville ([Stephen Ciotoli](#) of Counsel), for Petitioner–Plaintiff–Respondent.

PRESENT: [SCUDDER](#), P.J., SMITH, [SCONIERS](#), [GORSKI](#), [AND MARTOCHE](#), JJ.

MEMORANDUM:

*1 Petitioner–plaintiff (petitioner) commenced this hybrid CPLR article 78 proceeding and declaratory judgment action alleging that respondent–defendant (respondent) engaged in a pattern of violating New York's Open Meetings Law ([Public Officers Law § 100 et seq.](#)) and seeking reimbursement for his

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attorney fees. We note at the outset that this is properly only a CPLR article 78 proceeding inasmuch as petitioner does not “challenge the constitutionality of any statutes or regulations” (*Matter of Custom Topsoil, Inc. v. City of Buffalo*, 63 A.D.3d 1511, 1511, 879 N.Y.S.2d 854).

[1][2] We reject respondent's contention that Supreme Court erred in determining that it violated the Open Meetings Law on three occasions. “Every meeting of a public body shall be open to the general public, except that an executive session of such body may be called and business transacted thereat in accordance with [section 105]” (Public Officers Law § 103[a]). At such an executive session, i.e., “that portion of a meeting not open to the general public” (§ 102[3]), the topics that may be discussed are circumscribed by statute and include matters involving public safety, proposed, pending or current litigation, collective bargaining, and matters concerning the appointment or employment status of a particular person (§ 105[1]). The purpose of the Open Meetings Law is to prevent public bodies from debating and deciding in private matters that they are required to debate and decide in public, i.e., “deliberations and decisions that go into the making of public policy” (*Matter of Sciolino v. Ryan*, 81 A.D.2d 475, 440 N.Y.S.2d 795; see *Matter of Gordon v. Village of Monticello*, 87 N.Y.2d 124, 126–127, 637 N.Y.S.2d 961, 661 N.E.2d 691, revg. 207 A.D.2d 55, 620 N.Y.S.2d 573 insofar as appealed from on other grounds). In this case, the court properly determined that respondent violated the Open Meetings Law on three occasions by merely reciting statutory categories for going into executive session without setting forth more precise reasons for doing so. Given the overriding purpose of the Open Meetings Law, section 105 is to be strictly construed, and the real purpose of an executive session will be carefully scrutinized “lest the ... mandate [of the Open Meetings Law] be thwarted by thinly veiled references to the areas delineated thereunder” (*Daily Gazette Co. v. Town Bd., Town of Cobleskill*, 111 Misc.2d 303, 304, 444 N.Y.S.2d 44 [Sup. Ct., Schoharie County 1981]; see e.g. *Gordon*, 207 A.D.2d 55, 620 N.Y.S.2d 573, 620 N.Y.S.2d 573).

[3] We further reject respondent's contention that the court abused its discretion in awarding attorney fees to petitioner. Pursuant to the Open Meetings Law, “costs and reasonable attorney fees may be

awarded by the court, in its discretion, to the successful party” (Public Officers Law § 107[2]). Determining the appropriate remedy for respondent's actions is thus expressly a matter of judicial discretion (see *Matter of Sanna v. Lindenhurst Bd. of Educ.*, 85 A.D.2d 157, 159, 447 N.Y.S.2d 733, affd. 58 N.Y.2d 626, 458 N.Y.S.2d 511, 444 N.E.2d 975), and we perceive no abuse of the court's discretion in awarding attorney fees to petitioner (see *Matter of Goetschius v. Board of Educ. of Greenburgh Eleven Union Free School Dist.*, 281 A.D.2d 416, 417, 721 N.Y.S.2d 386).

*2 It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

N.Y.A.D. 4 Dept., 2012.

Zehner v. Board of Educ. of Jordan-Elbridge Cent. School Dist.

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