

NORTH CAROLINA
CHATHAM COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 06 CVS 239

Gretchen Lothrop and Gael Mckeon, 12 P 1: 51

Plaintiffs,

vs.

BY

Chatham County Board of Elections; Audrey
Poe, in her official capacity as Chairman and
member of the Board of Elections; Craig Bray,
in his official capacity as Secretary to and
member of the Board of Elections; Ernest
Dark, in his official capacity as a member of
the Board of Elections; and Dawn Stumpf, in
her official capacity as the Director of
Elections,

Defendants.

ORDER GRANTING

SUMMARY JUDGMENT FOR PLAINTIFFS

AND DECLARATORY RELIEF

AND INJUNCTIVE RELIEF

ORDER

This matter came on for hearing before the undersigned at the September 11, 2006, civil term of the Superior Court of Chatham County on the Plaintiffs' Motion for Summary Judgment. All plaintiffs were present, through counsel, C. Amanda Martin and Michael J. Tadych, of Everett, Gaskins, Hancock & Stevens, LLP. All defendants were present, through counsel, Paul Messick and Bob Gunn, of Gunn & Messick, LLP. Plaintiffs seek declaratory relief finding that the defendants violated the law in the past and injunctive relief compelling the defendants' adherence to the law in the future. The court reviewed the record, including the affidavits and discovery materials on file; considered the memoranda of law submitted by the plaintiffs; and heard argument of counsel concerning the motion. The court makes the following findings and determinations.

1. Open government inures to the benefit of the people, and "it is the policy of this State, as announced by the General Assembly, to conduct the public's business in public."

Boney Publishers, Inc. v. Burlington City Council, 151 N.C. App. 651, 657, 566 S.E.2d 701, 705 (2002).

2. The Public Records Law is intended to afford all citizens ready access to the documents and other records kept by those who transact public business, subject to certain statutory exceptions. The North Carolina Supreme Court has stated that "it is clear that the legislature intended to provide that, as a general rule, the public would have liberal access to public records." News and Observer Publishing Co. v. State ex rel. Starling, 312 N.C. 276, 281, 322 S.E.2d 133, 137 (1984).

3. The Court of Appeals has highlighted the importance of public disclosure of records relating to the conduct of public business and held that "[G]ood public policy is said to require liberality in the right to examine public records." Advance Publications v. City of Elizabeth City, 53 N.C. App. 504, 506, 281 S.E.2d 69, 70 (1981) (citation omitted).

4. Public bodies "must comply with the Open Meetings Law, which, as a general rule, requires public bodies to hold official meetings in open session so the public can attend. [The] public policy of this State requires that 'hearings, deliberations, and actions of [public bodies] be conducted openly,' because public bodies 'exist solely to conduct the people's business'." H.B.S. Contractors, Inc. v. Cumberland County Bd. of Educ., 122 N.C. App. 49, 52-53, 468 S.E.2d 517, 520 (1996) (internal citations omitted).

5. Plaintiffs are two residents of Chatham County, North Carolina, and this lawsuit alleges violations of the North Carolina Open Meetings Law, G.S. § 143-318.9 et seq. and North Carolina Public Records Law, G.S. § 132-1 et seq. The defendants are the Chatham County Board of Elections, the three members of the Chatham County Board of Elections and the director of the Chatham County Board of Elections (collectively "the Board").

6. The plaintiffs allege violations of the Open Meetings Law in connection with three meetings of the Board of Elections: January 17, 2006; March 7, 2006; and March 14, 2006.

7. The January 17, 2006, meeting was called as an emergency meeting to discuss a potential compromise with the Chatham Board of Commissioners related to the purchase of voting equipment. An "emergency meeting" may be called "because of generally unexpected circumstances that require immediate consideration by the public body." N.C. Gen. Stat. § 143-318.12(b)(3). Though the circumstances leading to the January 17, 2006, meeting no doubt created some time pressure on the Board of Elections, it did not create an emergency as that term is defined in the Open Meetings Law. The meeting, therefore, was not an "emergency meeting" and was called in violation of the Open Meetings Law.

8. For special meetings, the Board must post written notice of the meeting on the principal bulletin board of the public body or, if the public body has no such bulletin board, at the door of its usual meeting room. N.C. Gen. Stat. § 143-318.12(b)(2). The notice must state the purpose of the meeting and must be posted at least 48 hours in advance of the meeting.

9. The Board of Elections provided no notice whatsoever of the January 17, 2006, which was a violation of the Open Meetings Law, regardless of whether the meeting was a "special" or "emergency" meeting.

10. On March 7, 2006, the Board of Elections convened a closed session meeting. The Board provided no notice of the meeting, and the absence of notice constituted a violation of the Open Meetings Law. N.C. Gen. Stat. § 143-318.12(b)(2).

11. A public body may go into closed session only upon a motion duly made and adopted at an open meeting, citing the specific permissible purposes justifying the closed session. N.C. Gen. Stat. § 143-318.11(c). The Board did not begin its March 7, 2006, meeting in open session and pass a motion to go into lawful closed session, and its failure to do so constituted a violation of the Open Meetings Law.

12. A public body is required to keep accurate minutes of all its meetings and, when it meets in closed session, is required to "keep a general account of the closed session so that a

person not in attendance would have a reasonable understanding of what transpired." N.C. Gen. Stat. § 143-318.10(e). The Board of Elections did not keep any minutes or general account of its March 7, 2006, meeting. The Board's failure to keep minutes and a general account of the March 7, 2006, closed session constituted a violation of the Open Meetings Law.

13. "If a public body holds an official meeting at any time or place other than a time or place shown on the schedule filed pursuant to subsection (a) of this section, it shall give public notice of the time and place of that meeting as provided in this subsection. ... This notice shall be posted and mailed or delivered at least 48 hours before the time of the meeting." G.S. § 143-318.12(b)(2). On March 13, 2006, the Board of Elections cancelled its regular meeting that was scheduled to take place at 5:00 in the Board of Elections office in Pittsboro, Chatham County, on March 14, 2006. The Board decided instead to meet on March 14, 2006, in Chapel Hill, Orange County. No notice of the Chapel Hill meeting was provided 48 hours in advance of the meeting. The failure to provide such statutory notice constituted a violation of the Open Meetings Law.

14. Over time, Plaintiff Lothrop made requests for the minutes or other recordation of seven different meetings of the Board of Elections. The Director of Elections refused to provide Ms. Lothrop with copies of the draft minutes and stated that "minutes are not officially minutes until they have been approved and as such are not public record until they have been approved and made final by the Board."

15. The North Carolina Supreme Court explicitly has held that a public body may not withhold public records simply because they are draft. "We, therefore, affirm the trial court's ruling that the draft reports of individual Commission members are subject to disclosure under the Public Records Law." News and Observer Publishing Co. v. Poole, 330 N.C. 465, 484, 412 S.E.2d 7, 18 (1992). Accord, Piedmont Pub. Co. v. Surry Bd. of Comm'n, 24 Media L. Rep. (BNA) 1371 (2005)(ordering production of draft minutes and working papers preliminary to

minutes).

WHEREFORE, on the basis of the foregoing findings of facts and conclusions of law, it is hereby ORDERED, ADJUDGED AND DECREED that:

1. The defendants violated the Open Meetings Law by calling an emergency meeting on January 17, 2006.
2. The defendants violated the Open Meetings Law on March 7, 2006, by failing to convene in open session and go into closed session pursuant to a motion citing the basis for the closed session.
3. The defendants violated the Open Meetings Law by failing to keep minutes and a general account of the March 7, 2006, meeting.
4. The defendants violated the Open Meetings Law by failing to provide notice of the January 17, March 7, and March 14, 2006, meetings.
5. The defendants violated the Public Records Law by refusing to timely provide access to the minutes, draft minutes or other recordation of the meetings held on December 19, 2005; December 27, 2005; January 4, 2006; January 6, 2006; January 17, 2006; February 14, 2006; and March 14, 2006. Each of these violations separately entitle the plaintiffs to the relief prayed.
6. Plaintiffs are entitled to declaratory relief on their claims, and plaintiffs' motion for summary judgment pursuant to North Carolina Rule of Civil Procedure Rule 56 is granted.
7. Plaintiffs are entitled to injunctive relief based upon the violations both cumulatively and severally. The Board shall provide proper statutory notice of all regular meetings, special meetings and emergency meetings.
8. The Board shall keep minutes of all meetings and shall keep a general account of all closed-session meetings. All preliminary or working materials used to minutes of meetings are themselves public records. The Board shall retain and preserve all drafts and other

documents used to prepare the minutes/general account and shall permit the public access to inspect and copy such documents upon request. The Board shall respond in a timely fashion to all such requests, but in no event more than five days after the request is made.

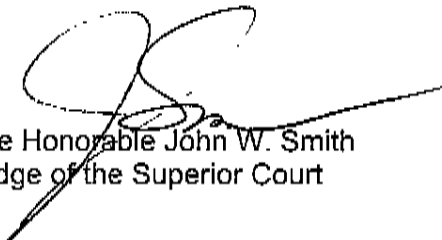
9. The Board shall prepare minutes and a general account of the March 7, 2006, closed session meeting. To the extent such minutes and general account are not clearly privileged, they are public records that must be produced for inspection and copying.

10. The plaintiffs are the prevailing party in this action and pursuant to the Court's discretion under the Open Meetings Law and Public Records Law, the Court orders the defendants to pay to plaintiffs the sum of \$3,500 as a partial award of attorney fees.

11. Violation of this order shall be punishable by contempt of court, among other available remedies.

12. The undersigned shall retain jurisdiction to enforce this Order, and the parties consent to any hearing related to this Order being held out of term and out of district.

IT IS SO ORDERED, this 12 day of September, 2006.



The Honorable John W. Smith
Judge of the Superior Court