

IN THE CHANCERY COURT OF TENNESSEE FOR
THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

SUSAN LACY and STEPHEN HUMBERT,

Plaintiffs,

v.

No.: CH-16-0584

MEMPHIS CITY COUNCIL,

Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF UNDER THE TENNESSEE OPEN MEETINGS ACT

COME NOW the Plaintiffs, through counsel, and for cause of action against Defendant Memphis City Council, would show the Court the following:

I. INTRODUCTION

President Lyndon Johnson once declared as an essential principle of governance that “a democracy works best when the people have all the information” and that “[n]o one should be able to pull the curtains of secrecy around decisions which can be revealed without injury to the public interest.”

In sharp contrast and in an effort to avoid public scrutiny over its impending action, Defendant Memphis City Council, each of the Council Members, and City Council Attorney Allan Wade worked covertly without public knowledge, notice, or oversight to develop a resolution and gain the votes necessary in an attempt to hand authority of the Overton Park Greensward to the Memphis Zoological Society. Defendant’s actions were taken in direct violation of Tennessee’s Open Meetings Act, Tenn. Code Ann. §§ 8-44-101 *et seq.*, which was enacted on the fundamental conviction of that the “formation of public policy and decision is public business and shall not be conducted in secret.” Tenn. Code Ann. § 8-44-101(a). Nevertheless, Defendant Memphis City Council in representing the City of

Memphis has repeatedly violated both the letter and spirit of Tennessee's Open Meetings Act. Because of the violations of the Act, the action taken by the City Council at the March 1, 2016 meeting is "void and of no effect." Tenn. Code Ann. § 8-44-105.

II. JURISDICTION

1. Jurisdiction is invoked pursuant to Tenn. Code Ann. § 8-44-106.

III. PARTIES

2. Plaintiff Susan Lacy (hereinafter, "Plaintiff Lacy") is a resident of Memphis, Tennessee and a citizen of this State within the meaning of Tenn. Code Ann. § 8-44-106(a). She brings this action individually and on behalf of all of the citizens of the State of Tennessee in the effort to ensure the accountability of the Defendant Memphis City Council (hereinafter "City Council") and its Members to the citizens they serve.

3. Plaintiff Stephen Humbert (hereinafter, "Plaintiff Humbert") is a resident of Memphis, Tennessee and a citizen of this State within the meaning of Tenn. Code Ann. § 8-44-106(a). He brings this action individually and on behalf of all of the citizens of the State of Tennessee in the effort to ensure the accountability of the City Council to the citizens it serves.

4. Defendant Memphis City Council is a public body with the authority to make decisions on behalf of the City of Memphis and its citizens. It is defined as the "legislative branch of the city government of Memphis, Tennessee." Memphis Municipal Code § 1-4-2.

IV. FACTUAL ALLEGATIONS

5. At all times relevant to the complaint, City Council has been and continues to be a

“governing body” and “public body” within the meanings of Tenn. Code Ann. § 8-44-102. The City Council is the “legislative branch of the city government of Memphis, Tennessee.” Memphis Municipal Code § 1-4-2.

6. As a “governing body,” the City Council is subject to the requirements and restrictions contained within the Tennessee Open Meetings Act, Tenn. Code Ann. § 8-44-102 et seq.

7. On December 31, 2015, at the request of Councilman Reid Hedgepeth, City Council Attorney Allan Wade issued an opinion that concluded that the City Council had given control, management, and unfettered use of the Overton Park Greensward to the Memphis Zoological Society (“MZS”) and not to the Overton Park Conservancy.

8. On January 21, 2016, MZS filed suit against the Overton Park Conservancy, the City of Memphis, and the Memphis City Council in a declaratory action seeking a judicial declaration that MZS had the right to operate and manage the Greensward. MZS filed this matter in Shelby County Chancery Court, is case number CH-16-0096, and has been assigned to Chancellor James R. Newsom III.

9. In response to this lawsuit, on February 19, 2016, the Overton Park Conservancy filed an Answer and Counterclaim seeking similar declaratory relief and pointing out that both Wade’s opinion and MZS’s complaint had failed to attach or consider the 1988 Overton Park Master Plan and the 1989 Zoo Master Plan that had been approved by the Memphis City Council and Memphis Mayor and established that MZS did not have control over the Greensward.

10. On or before March 1, 2016, the members of the City Council directly and/or through City Council Attorney Wade with input from MZS held discussions and deliberations

outside of public view and without public notice on the Greensward controversy and developed a plan and resolution for action to be taken on the Greensward controversy by the Memphis City Council.

11. On Tuesday, March 1, 2016, just hours before voting for its approval, the City Council posted on its website a proposed resolution entitled, “Resolution Designating and Approving Various Uses and Purposes for the City’s Park, Known as Overton Park” (hereafter known as “the Resolution”) (Attached as Exhibit A to this Complaint).

12. No emergency or exigent circumstances existed that required the City Council to act with such haste and without providing reasonable notice to the public of its proposed actions.

13. The Resolution as initially proposed had six exhibits attached to its text, which were identified Exhibits A-F. Exhibit B to the Resolution was a proposed map entitled, “Boundaries Designated for Zoo Purposes and Greensward Parking.”

14. Councilman Hedgepeth stated to the Memphis Daily News that he was working on the draft of the resolution late into the night prior to March 1, 2016.

15. Upon its initial posting on the morning of March 1, 2016 and despite its drafting not occurring until late into the night on February 29, 2016, the Resolution already had ten sponsors: Council members Kemp Conrad, Hedgepeth, Patrice Robinson, Bill Morrison, Philip Spinoso, Martavius Jones, Janis Fullilove, Edmund Ford, Berlin Boyd, and Joe Brown.

16. Prior to March 1, 2016, the City Council had never discussed this resolution, its content, its maps, its drafting, or any similar proposal at any public meeting.

17. At 1:45 on March 1, 2016, the City Council held an Executive Session meeting. At this meeting, the City Council members did not discuss the proposed resolution or any amendments. Instead, the topic was carried over for the general meeting to begin at 3:30 p.m.

18. During the general City Council meeting on March 1, 2016, more than 25 citizens of the City of Memphis spoke in opposition to the Resolution. At the conclusion of citizens' comments, the City Council engaged in a short discussion of the Resolution.

19. During that discussion, Councilman Morgan proposed two amendments to the Resolution. During his proposal and in response to complaints of confusion from the citizens attending the meeting, Councilman Morgan stated that he was referring to Exhibit B of the Resolution—"Boundaries Designated for Zoo Purposes and Greensward Parking"—but that the Exhibit B from which the City Council and its members were working was not the one that was contained in the proposed Resolution that had been posted online. Thus, Morgan sought to amend an exhibit to a resolution that had not been viewed by the public.

20. Also during the City Council's discussion, Councilwoman Robinson voiced her concern that the public did not know what was contained in the Resolution and that the public had not been privy to the City Council's discussions or their goals with regards to the Resolution. Specifically, she stated: "[T]he audience has not heard our dialogue about why we are presenting this resolution...they have some assumptions, but we haven't given them the reason and we haven't shared with them what does this resolution do...." Robinson then stated, "But I want to encourage everyone to come to the table and let's do our best work, uh, this resolution from the, uh, meetings we had about...with our attorney as it relates to litigation we don't believe that not another tax payer dollar should be spent on court costs, attorneys..."

21. Prior to bringing the Resolution to a vote, Councilman Jones attempted to ask a question and make a comment regarding the Resolution. Councilman Conrad stated that his question and comment were coming too late and that the Resolution was going to a vote.

22. The City Council passed the Resolution 11-1. Councilman Jones was the only “no” vote.

23. After passage of the Resolution, Councilman Jones stated that he was asked to sponsor the Resolution in a telephone call from City Council Attorney Wade.

24. Upon information and belief, Attorney Wade on behalf of Councilman Hedgepeth and the MZS made a number of telephone calls to discuss the development, objectives, and drafting of the Resolution and to obtain sponsors for the Resolution.

25. Upon information and belief, the City Council or groups of Council members met outside of the public’s view in-person, via telephone, or engaged in “electronic communication” not available to the public for purposes of privately discussing the development, goals, and drafting of the Resolution.

26. To effectuate the purposes of the Tennessee Open Meetings Act, “[a]ll meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee.” Tenn. Code Ann. § 8-44-102(a)

27. There is a narrow exception to the open meeting requirements as applies to discussions between public officials and their attorneys concerning pending litigation. The exception is limited to meetings in which discussion of present and pending litigation takes place. Clients may provide counsel with facts and information regarding the lawsuit and counsel may advise them about the legal ramifications of those facts and the information given to him. However,

once any discussion, whatsoever, begins among the members of the public body regarding what action to take based upon advice from counsel, whether it be settlement or otherwise, such discussion shall be open to the public and failure to do so shall constitute a clear violation of the Open Meetings Act. Smith County Education Asso. v. Anderson, 676 S.W.2d 328, 334 (Tenn. 1984) (emphasis).

28. Any discussion among themselves and with Council Attorney Wade regarding what action to take based upon advice of counsel should have been conducted in open to the public and the failure to do so constitutes a clear violation of the Open Meetings Act.

29. The failure of the City Council to act in accordance with the requirements of the Open Meetings Act deprived the public and the City of Memphis of the opportunity to engage in a meaningful review of the Resolution and to consider its legality.

30. This failure was especially significant in this case as the City Council does not have the legal authority to take the action it attempted to take in its March 1, 2016 Resolution.

31. Specifically, pursuant to Article 57, § 579 of the City Charter, the City Council had the power to establish a Park Commission, which it subsequently did.

32. In 2000, the City Council passed Ordinance No. 4763, which abolished the Memphis Park Commission, but also created and established a division of park services. In doing so, the City Council gave the Division of Park Services “complete and full control and management over all parks” City Ordinance § 2-26-1(A). The Division of Park Services is headed by a division director who reports to, takes direction from, and is responsible to the Mayor. City Ordinance § 2-26-1-(C).

33. Accordingly, the City Council had no legal authority to take the actions contained in its March 1, 2016 Resolution as it had ceded such power to the executive branch more than a decade and a half prior.

34. For this reason and others, the City Council's business as required by the Open Meetings Act should have been conducted in public with full and proper notice to the citizens of the City of Memphis.

V. OPEN MEETINGS ACT VIOLATIONS

The foregoing paragraphs are incorporated verbatim herein.

35. The City Council's actions violated the Open Meetings Act by failing to provide adequate and reasonable notice to the public regarding consideration of the Resolution;

36. The City Council's actions violated the Open Meetings Act by failing to keep, record, and maintain for open public inspection the minutes of all meetings in which discussions of the Resolution occurred;

37. The City Council's actions violated the Open Meetings Act by conducting meetings regarding the Resolution without granting the public access;

38. The City Council's actions violated the Open Meetings Act by engaging in electronic communications without making those communications publicly available; and

39. The City Council's actions violated the Open Meetings Act by attempting to cloak the deliberations and decision-making of its members in an overly broad interpretation of the attorney-client privilege exemption.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray the Court will issue an Order:

40. Declaring that the City Council has violated the Tennessee Open Meetings Act, Tenn. Code Ann. § 8-44-102 et seq;

41. Declaring that any actions taken by the City Council at any meetings conducted in violation of the Open Meetings Act are null and of no effect, pursuant to Tenn. Code Ann. § 8-44-105;

42. Requiring the City Council to fully maintain and disclose its minutes pursuant to Tenn. Code Ann. § 8-44-104;

43. Enjoining the City Council, its Chairman, members, attorney and other agents or employees from further violations of the Open Meetings Act pursuant to Tenn. Code Ann. § 8-44-106(c);

44. Requiring the City Council to include the Court's written findings of fact, conclusions of law, and final judgment in the City Council minutes pursuant to Tenn. Code Ann. § 8-44-106(b), retain jurisdiction over the parties and subject matter for a period of one year from the judgment's date of entry and requiring the City Council to submit written semi-annual reports to the Court concerning compliance with the Court's judgment pursuant to Tenn. Code Ann. § 8-44-106(b);

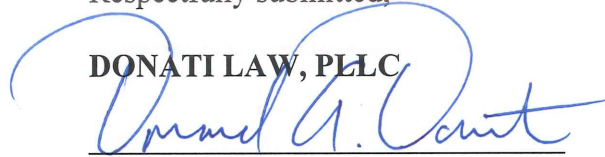
45. Ordering the City Council to pay all reasonable costs and attorneys' fees incurred as a result of this matter;

46. Ordering Defendant, its members, and agents to preserve all documents, communications, and electronically stored information—whether on government or private cellular phones, computers and servers—relevant to this lawsuit; and

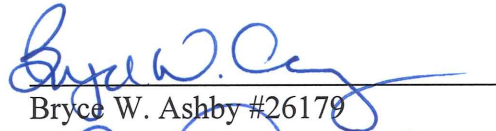
47. Granting the Plaintiffs any further relief to which they may be entitled.

Respectfully submitted,

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