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Supreme Court rejects tossing officials out for closed meetings

By: Kevin Featherly

The state Supreme Court has declined to throw elected Victoria city officials out of office for violating the state Open Meeting Law—a collective 38 times.

The city officials cannot be removed, justices ruled July 18, "because their violations were not proven in three separate, sequential adjudications."

The ruling keeps Victoria City Council members James Crowley and Thomas Strigel in office.

Two others named in the suit, council member Lani Basa and former Mayor Thomas O'Connor, already are out of office. Basa chose not to run for re-election.

O'Connor was defeated in 2016, by current Mayor Thomas Funk—the named litigant for the plaintiffs. Though his name remains in the case's title—Funk, et. al. v. O'Connor, et. al.—Funk said he withdrew from the litigation after becoming mayor in early 2017.

Funk now must continue working with Crowley and Strigel—a relationship that, mildly put, is strained: Funks declines to call them his "colleagues."

The mayor said he is disappointed by the decision.

"What they have effectively done, for all practical purposes, is render the Open Meeting Law meaningless," the mayor said. "It's unenforceable, at least in terms of removal."

The ruling upholds both a District Court judge's determination and a subsequent Court of Appeals decision. It also effectively puts the Supreme Court's imprimatur on a 2006 Court of Appeals' opinion, Brown v. Cannon Falls Township.

Associate Justice Anne K. McKeig's opinion notes that statute allows for removal if a public official violates the Open Meeting Law "in three or more actions ... involving the same governing body." The Brown court ruled that the Legislature intended those words to mean that three separate "adjudications" must take place prior to removal. The Supreme Court agreed.

The Brown decision also was a key basis for Carver County District Court Judge Janet L. Barke Cain's 2016 ruling in the Funk case. The Court of Appeals—in an unpublished 2017 opinion—upheld her verdict.

But Cain did not let the officials entirely off the hook. She fined O'Connor and Crowley $2,250 each. Strigel was fined $2,100 and Basa paid $1,200. Councilmember Joe Pavelko, not named as a defendant, was not fined. State law required the officials to pay out of pocket.

That wasn't good enough for Funk. By refusing to consider each individual violation a potential "action" that counts toward the three needed for removal, he said, the high court has thrown open the door to local government officials statewide operating in secret.

"It basically tells elected officials, 'Do what you want,'" Funk said. "There is no accountability."

'Extreme remedy'

There was a time when the Supreme Court appeared to support Funk's view.

In its unanimous 1994 Claude v. Collins decision, the high court unseated three elected Hibbing city officials—including the mayor—after just four individual Open Meeting Law violations. All occurred between Jan. 2 and April 5, 1991, during contentious labor negotiations. All were part of a single court action.

In that decision, the Supreme Court overturned a St. Louis County District Court ruling that was later upheld by the Court of Appeals. The lower courts had refused to remove the officials.

However, since then the Open Meeting Law statute has been revised several times and the Brown decision arrived to clarify what it takes to remove an official—at least three separate adjudications, held sequentially.

Janel Dressen, a shareholder at Anthony Ostlund Baer & Louwagie, handled the respondents' case on appeal. Attorney Alan Kildow handled the district court case.

Contacted Wednesday, Dressen lauded the Supreme Court's ruling. "If you read the decision," she said, "they are enforcing the Open Meeting Law exactly as the Legislature has written it."

By petitioning the Supreme Court to consider ouster, Dressen said, the plaintiffs were seeking "an extreme remedy."

"The Supreme Court has not said that you can't get that remedy, but in order to do so there needs to be prior adjudications," Dressen said. "This doesn't mean there is no remedy or that the law can't be enforced—or that it wasn't enforced here."

Dressen acknowledges that her clients violated the law. But all their violations occurred between January and October of 2013—before any legal action commenced. Once sued by a group of 13 Victoria citizens, she said, they were put on notice.

"They made changes and there have been no violations ever since," Dressen said. Through fines they were held to account, she said—just as the law intends.

How it unfolded

The case was launched in May 2014, when three sets of plaintiffs filed separate—but identical—complaints, all signed by the same attorney. In January 2015, two more sets of plaintiffs represented by a single lawyer filed more lawsuits. All were consolidated into a six-day trial held in November 2015.

In district court, Judge Cain found that a series of 2013 city council meetings were improperly sent into closed, executive session—out of public view.

During those closed meetings, roughly $7 million in potential real estate deals were discussed and negotiated, according to Funk. At the time, the city was considering several big construction projects, including a new city hall and public works building.

Cain found additional violations for failing to properly record meetings and for failure to notify the public when meetings would be closed and what would be discussed during them.

However, citing the Brown decision, Cain denied plaintiff's request to remove the officials from office.

Earlier this year, Funk, Kildow and the other Victoria residents who brought the case were rewarded by the Society of Professional Journalists' Minnesota chapter with its Peter S. Popovich Award. The SPJ applauded the citizens' efforts to procure public records and for filing suit to hold officials to task.

Mark Anfinson, counsel for the Minnesota Newspaper Association, agrees that the citizen group performed a valuable service. But he suggests it might have been better had they stopped after their district court victory.

Anfinson said it became evident to him through the appeals that plaintiffs wanted more than just accountability. They wanted the courts to reverse the judgment of Victoria's voters, he said. That's not what the law is for, he said.

The Open Meeting Law is a tool to help ensure public accountability, Anfinson said, and it contemplates giving officials a chance to clean up their act.

"When you start using the law as a weapon in municipal civil wars, it no longer functions as it should or is intended to," he said. "That is what really happened here."

The court fight is done. Funk is not.

The mayor said he has begun reaching out to legislators in hopes of prompting them to revise the Open Meeting Law.

"If the Legislature doesn't change it, it really is meaningless," Funk said.

"If the people of the state can't hold their elected officials accountable for violations of this law, then why have the law?" he added. "Basically, it becomes something of a useless exercise if it isn't going to be enforced or it has no teeth."