



West Virginia E-Filing Notice

CC-14-2017-C-108

Judge: C. Carter Williams

To: Lary Garrett
garrettlaw@hardynet.com

NOTICE OF FILING

IN THE CIRCUIT COURT OF HAMPSHIRE COUNTY, WEST VIRGINIA
Charles Hall v. City of Romney by its Mayor and City Council
CC-14-2017-C-108

The following supporting documents was FILED on 12/21/2020 2:56:05 PM

Notice Date: 12/21/2020 2:56:05 PM

Sonja Embrey
CLERK OF THE CIRCUIT
Hampshire
50 S. High Street
ROMNEY, WV 26757

(304) 822-5022
sonja.embrey@courtswv.gov

IN THE CIRCUIT COURT OF HAMPSHIRE COUNTY, WEST VIRGINIA

CHARLES C. HALL

PLAINTIFF

v.

CIVIL ACTION NO.:17-C-108

CITY OF ROMNEY

by its MAYOR, and CITY COUNCIL,

That being:

Mayor, Beverly Keadle

Councilman John Duncan,

Councilman Duncan Hott

Councilman Carl Laitenbarger

Councilman Adam McKenery

Councilman Gary Smith,

and

Royce B. Saville,

and

Indian Mound Cemetery Association

DEFENDANTS

PLAINTIFF'S BRIEF

I. PRELIMINARY STATEMENT.

Plaintiff filed this action pursuant to *W. Va. Code* § 6-9A-1, et seq., alleging Defendant City of Romney made a decision without complying with *W. Va. Code* § 6-9A-3, which requires open meetings and notice to the public.

II. STATEMENT OF FACTS.

A. PRELIMINARY FACTS.

On December 7, 2015, Royce B. Saville, a licensed attorney practicing before the Bar of the Court, appeared at the Defendant City Council meeting, and advised the Council of his desire to purchase plots in the cemetery owned by the Defendant City. He offered to pay the City

\$1,000.00 for the plots if transferred by Quitclaim Deed, and more if transferred by a Warranty Deed. The minutes of the meeting note: “These plots are located in front of the Confederate Soldier’s graves.” Mayor Hileman suggested that the request be postponed until January 4, 2016, when City Attorney Cathe Moreland would be present. *Plaintiff Exhibit 1.*

On January 4, 2016, Saville again appeared at a meeting of the Council of the Defendant City of Romney. At that time, Saville advised the Council that he still desired to purchase certain lots in the Indian Mound Cemetery. Saville advised that he had researched the matter in the private papers of the Cemetery Association and discovered that the City might have an ownership interest in said lots. However, he further advised the City that he was not sure the City had any interest in the lots, but that he would be willing to accept whatever interest the City had. *Plaintiff Exhibit 2.* During this entire time, Saville was both the President of Indian Mound Cemetery Association, and also Chairman of the Romney Historic Landmark Commission. Saville advised the Defendant City Council that the Historic Landmark Commission had no opposition to his purchase, which was a misrepresentation.

Saville also misrepresented the subject of the property by alternatively referring to “lots” and “plots,” thereby intentionally misleading the Defendant City as to the size and extent of the desired purchase.

Based upon Saville’s misrepresentation, the Defendant City Council passed a resolution to convey its interest in the cemetery lots to Saville for \$1,000.00. *Plaintiff Exhibit 2.*

At their meeting held on February 1, 2016, the Defendant City Council was advised of the misrepresentation by Saville, and voted to rescind its decision made on January 4, 2016, to convey the lots to Saville. Plaintiff Charles Hall made the presentation to the Defendant City Council advising them of the historic significance of the site. *Plaintiff Exhibit 3.*

Saville then wrote a letter on February 18, 2016, to the City of Romney advising that he was disturbed by the Council's action in attempting to "resend" (sic) the City's contract with him to obtain the two cemetery lots for \$500.00 each. In the letter, he advised the City that the City had no legal title to the lots in questions, only the questionable claim that Saville brought to the attention of the City. He did not advise that he had brought the subject to the Defendant City's attention as the President of the Indian Mound Cemetery Association.

Saville also accused Plaintiff Charles Hall of engaging in "tortuous" (sic) interference with Saville's "contract," and advised that "any counsel (sic) member who consulted with Mr. Hall was also guilty of tortuous (sic) interference." In addition, he alleged that the Chamber of Commerce may somehow be vicariously liable. Again, Saville advised that unless the City conveyed to him the cemetery **lots** [emphasis added], he would have no choice other than to file suit for specific performance, and also a claim for "tortuous" (sic) interference with his contract against various individuals. *Plaintiff Exhibit 4.*

The City did not change its mind. Saville then filed Civil Action No. 16-C-70 on September 8, 2016, requesting specific performance of an "agreement" reached at the January 4, 2015, Defendant City Council meeting.

Defendant City responded by filing an Answer alleging that Saville had misrepresented the position of the Historic Landmark Commission; that he had misrepresented the nature of the subject property by alternatively referring to "lots" and "plots," thereby intentionally misleading the Defendant City as to the size and extent of the desired purchase; asserted the statute of frauds as an affirmative defense; and asserted that Saville did not have clean hands.

In his Complaint as Plaintiff, Saville alleged that the City had agreed to convey to him two (2) lots in the cemetery. Each lot contains eight (8) to 10 burial plots. Accordingly, Saville

attempted to obtain 16 to 20 burial plots, while the minutes approved by the City only agreed to convey two (2) plots. As a member and President of the Board of the Indian Mound Cemetery Association, Plaintiff should have known the difference between the “lots” and “plots.” Saville testified that ordinary plots in the Cemetery were now selling for \$500.00 each. *Plaintiff Ex. 5.*

In addition, in Civil Action No. 16-C-70, Saville attempted to recover all of the lots for himself. He did not join the Indian Mound Cemetery Association, even though he is the President of said association, and had a fiduciary duty to represent its interest.

After a considerable amount of litigation (mostly requests for continuances or extra time), including a failed mediation, the Defendant City decided in an unannounced closed session that it could not afford the litigation, and agreed [by the Order of October 23, 2017], to convey two (2) plots to Saville for the sum of \$1,000.00, and to convey the remaining plots to the Indian Mound Cemetery Association, a non-governmental entity, for zero consideration. *Plaintiff Exhibit 6.*

B. FACTS MORE SPECIFIC TO THIS CASE.

The Defendant City Council decided to compromise the case at its regularly scheduled meeting held on September 11, 2017. The subject of the litigation with Saville was not on the Agenda, *Plaintiff Exhibit 7*, and was not discussed in the open meeting. At some point, Defendant City Council apparently went into executive session to discuss the legal matter (Civil Action No. 16-C-70). It was during that executive session that the Defendant City Council made the decision to compromise the case with Saville. However, the Defendant City Council did not then take a vote in the open session on the proposal; rather, the City Attorney **privately** polled each of the members to see if they would agree with the proposed settlement. *Plaintiff Ex. 10.* The executive session apparently was ended. There was no vote by the City Council and there is

no record of their having made such decision. In fact, the Minutes of the September 11, 2017, City of Romney Council Meeting state: “Back in Regular Session: Let the record show no action was taken during the Executive Session.” *Plaintiff Exhibit 8*.

At Defendant City Council’s November 6, 2017, meeting, Plaintiff appeared in order to oppose confirmation of the agreement with Saville. At this meeting, Plaintiff warned council members they were in violation of the Open Meetings Act, and that a violation of the Act constituted a misdemeanor. Nonetheless, Defendant City of Romney ratified their earlier decision to compromise. *Plaintiff Exhibit 9; Plaintiff Exhibit 10*.

III. ARGUMENT.

A. OPEN MEETINGS ACT REQUIREMENTS.

At its September 11, 2017, meeting, Defendant City Council clearly made a decision to compromise its civil action with Saville, and essentially agreed to accept his original proposal, in private, with no notice to the public, in clear violation of *W. Va. Code* § 6-9A-3. A “decision” is defined in *W. Va. Code* § 6-9A-2(1) as:

any determination, action, vote, or final disposition of a motion, proposal resolution, order, ordinance or measure upon which a vote of the governing body is required at a meeting at which a quorum is present. [Emphasis added.]

Here, the City Attorney Cathe Moreland polled the Defendant City Council members in private and then related the City’s decision to accept Saville’s offer to Saville and the Court.

The Defendant City failed to put the topic of the lawsuit on the agenda; but it did put an executive session on the agenda, which is contrary to the Ethics Commission Guidelines. *See, <https://ethics.wv.gov/openmeetings/Pages/default.aspx#executive>*. The City Council failed to specify the subject of the Executive Session in the Motion setting up the Executive Session, as

required by *W. Va. Code* § 6-9A-4(a) and the Ethics Commission Guidelines; and the Council made a decision to compromise the civil action, and essentially agree to Saville's original offer that had been previously rejected at a properly held meeting. Yet none of this is mentioned in the minutes of that meeting. *Plaintiff Exhibit 8*. It is not sufficient to cite "legal" reasons for going into an Executive Session.

B. EXECUTIVE SESSION.

Defendants failed to follow the procedural requirements necessary to hold an Executive Session. *W. Va. Code* § 6-9A-4(a) provides that during the open portion of the meeting, prior to convening the Executive Session, the presiding officer is required to identify the authorization for holding Executive Session, and present it to the governing body and to the general public. But this was not done. *W. Va. Code* § 6-9A-4(a) further provides: "no decision may be made in the executive session."

Moreover, it is improper for Defendant City to put "Executive Session" on its agenda (*Plaintiff Exhibit 7*), because there can only be an Executive Session upon a motion made during a meeting and a vote by the members in accord with the Ethics Commission Guidelines.

The fact that Defendant City improperly placed "Executive Session" on its agenda for September 11, 2017, meeting shows the Defendant City was aware that it had to give some notice about what they planned to do. So Defendant City used the most obfuscating terms imaginable in order to avoid the legal necessity of providing notice as to the **topic** of the Executive Session, which is required by *W. Va. Code* § 6-9A-4.

C. ACTIONS IN VIOLATION OF ARTICLE VOIDABLE.

The Open Meetings Act clearly authorizes the Circuit Court “to annul a decision made in violation of this article.” *W. Va. Code* § 6-9A-6.

D. REMEDIAL ACTION BY DEFENDANT.

Plaintiff has used Defendant City Council’s minutes as admissible evidence as statements against interest or admissions by a party opponent and admissible against said party opponent.

However, the maker of minutes, i.e., Defendant, cannot use said minutes as evidence since same may be self-serving. In order for Defendant to prove that they took remedial action, the City must produce credible testimony from a first-hand witness to testify in open court, subject to cross-examination, to the so-called remedial action.

E. PENALTIES FOR VIOLATION OF ARTICLE.

1. CRIMINAL PENALTIES.

W. Va. Code § 6-9A-7(a) provides:

Any person who is a member of a public or governmental body required to conduct open meetings in compliance with the provisions of this article and who willfully and knowingly violates the provisions of this article is guilty of a **misdemeanor** and, upon conviction thereof, **shall** be fined not more than five hundred dollars. . .[Emphasis added.]

Clearly the statute covers the acts by the individual Defendants, because they clearly violated its terms and requirements. A person is responsible for the consequences of his acts and ignorance of the law is no defense. The statute provides that an individual “who willfully and knowingly violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, **shall** be fined.” The facts supporting conviction are clear and uncontested, and the

penalty is mandatory. If there are no legal consequences for violating the Open Meetings Act, then the Act becomes meaningless.

As set forth above, Defendant City Council members on November 6, 2017, ratified the agreement to compromise with Saville even after Plaintiff cautioned them that they had violated the Open Meetings Act, thereby committing a misdemeanor. In spite of the information provided them by Plaintiff, the Defendant City Council members voted to ratify their illegal action.

Plaintiff Exhibit 9; Plaintiff Exhibit 10.

2. CIVIL PENALTIES.

W. Va. Code § 6-9A-7(b) provides:

A public agency whose governing body is adjudged in a civil action to have conducted a meeting in violation of the provisions of this article may be liable to a prevailing party for **fees and other expenses** incurred by that party in connection with litigating the issue of whether the governing body acted in violation of this article. . .

Defendant clearly violated this statute and Plaintiff is entitled to reasonable attorney fees, court costs and expenses.

IV. SIGNIFICANCE OF CASE.

Plaintiff seeks to enjoin Defendant from consummating an illegal agreement with Saville. Defendant City seeks to convey at least \$1,000.00 of publicly owned real estate to Saville, and the remainder of the plots to the Indian Mound Cemetery Association, also a private entity, in clear violation of *W. Va. Code* § 8-12-18(a), which prohibits public agencies from selling property valued at \$1,000.00 or more unless conveyed to another public agency or sold at public auction. Neither of these exceptions apply here.

If allowed to proceed, Saville will have successfully accepted municipal property for himself and a private association.

The Defendant City of Romney intentionally and purposefully engaged in illegal action after being advised it was illegal, and should not be allowed to correct obvious, planned errors, as allowing same only serves to encourage illegal action. This is why the Open Meetings Act has clear and often severe penalties and punishments. If the Court excuses and ignore the Defendants' illegal acts, then the statute is meaningless.

V. ACTION REQUESTED.

Plaintiff requests this Court schedule a bench trial in this matter.

Respectfully submitted this the 21st day of December, 2020.

CHARLES C. HALL
Plaintiff, by Counsel

/s/ Lary D. Garrett
LARY D. GARRETT
Garrett & Garrett
Attorneys at Law
PO Box 510
Moorefield, WV 26836
Ph: 304-538-2375
fax: 304-538-6807
garrettlaw@hardynet.com
WV Bar ID: 1344
COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

I, Lary D. Garrett, Counsel for Plaintiff, Charles C. Hall, hereby certify that I e-filed the foregoing *Plaintiff's Brief*, which gives notice to all counsel of record, and served Defendant, Royce B. Saville, *pro se*, by mailing same to him at his office address of PO Box 2000, Romney WV 26757, by U.S. mail, postage pre-paid, all done on this the 21st day of December, 2020.

/s/Lary D. Garrett
Lary D. Garrett