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***Schmidt v. Washoe County*, 123 Nev. Adv. Op. No. 16
(June 14, 2007)¹**

CIVIL LAW – OPEN MEETING LAW

Summary

Gary R. Schmidt raised six alleging violation of Nevada’s Open Meeting Law, NRS § 241 *et seq.* The first four stemmed from a Washoe County Board of Commissioners (“WCBC”) meeting on January 11, 2005. First, that the WCBC violated the Open Meeting Law by “pulling” a lobbying contract from its agenda. Second, that WCBC violated the law when it allegedly deliberated on whether to remove the lobbying contract item from its agenda. Third, that WCBC improperly reduced his allotment of time to speak on the lobbying contract. Fourth, that WCBC improperly refused to read into the record letters written by other members of the community.

The other two stemmed from WCBC’s March 21, 2005 caucus meeting.

Disposition/Outcome

The Supreme Court affirmed the judgment of the district court in dismissing all six claims.

Factual and Procedural History

On January 11, 2005, Gary R. Schmidt and several others attended a meeting of the Washoe County Board of Commissioners (“WCBC”) intending to speak in opposition of a county lobbying contract. At the beginning of the meeting, however, WCBC announced that the lobbying contract was “being pulled” from the agenda. Afterward, Schmidt remained and received two opportunities to speak. First, Schmidt commented during the regularly scheduled “public comment” period. Second, he received two additional minutes of comment time after WCBC reopened the lobbying contract item for the specific purpose of permitting public comment.

In March 2005, WCBC distributed an agenda announcing that it planned to hold a “caucus meeting” on March 21, 2005, to review agenda items for an upcoming meeting. The agenda provided that “said review, if requested by [WCBC], is limited to a brief staff presentation of issues and may include review of background information and questions to be answered at the regular meeting.” At the bottom of the first page, the agenda stated that due to time constraints, certain bills up for discussion will be posted on the Washoe County website, and that additional bills upon which comment may be sought by the WCBC will be posted when known. The agenda also provided for 3 minutes of public comment on all items scheduled for the March 21 caucus meeting.

¹ By Matthew H. Engle.

Schmidt filed two complaints in Washoe County district court alleging numerous Open Meeting Law violations by WCBC at those meetings.

Schmidt raised four issues with respect to the January 11 meeting. First, that WCBC violated the Open Meeting Law by “pulling” the lobbying contract item from its agenda. Second, that WCBC violated the Open Meeting Law at its caucus meeting on January 10 when it allegedly deliberated on whether to remove the lobbying contract item from its January 11 agenda. Third, that WCBC improperly reduced his allotment of time to speak on the lobbying contract from 3 minutes to 2 minutes. Fourth, that WCBC wrongly refused to read into the record letters written by other members of the community.

Schmidt raised two issues with respect to the March 21 meeting. First, that WCBC violated the Open Meeting Law by conducting activities not properly noticed on its agenda. Second, that WCBC violated Washoe County Code §§ 5.017, 5.019, and 5.021 by failing to hold its March 21 caucus meeting in the proper chambers on the proper day.

Washoe County filed motions to dismiss both of Schmidt’s complaints for failure to state a claim. In August 2005, the district court granted Washoe County’s motion to dismiss Schmidt’s first complaint, reasoning that the Open Meeting Law did not specify how items are to be placed on the agenda or removed. The district court also noted that Schmidt was allowed to speak on any matter he desired.

In February 2006, the district court granted Washoe County’s motion to dismiss Schmidt’s second complaint. Schmidt had complained the WCBC conducted activities not noted on their agenda, but the district court concluded that the caucus meeting agenda included a ‘legislative update’ item which gave sufficient notice of the activities that will be conducted during the meeting. The district court also determined that there was no support for Schmidt’s claims that WCBC must hold caucus meetings on a certain day in a certain room. Schmidt appealed.

Discussion

Regarding Schmidt’s contention that the agenda requirements of the Open Meeting Law prevent public bodies from “pulling” agenda items during meetings, the Court noted there is no statutory provision requiring public bodies to discuss, or take action on, all agenda items. Because the removal of agenda items did not equate to taking action on those items, it concluded that public bodies are free to remove agenda items at any time.

Schmidt had alleged that during a January 10 caucus meeting, WCBC improperly deliberated toward a decision to “pull” the lobbying contract item from its January 11 agenda. However, because a public body may remove or refuse to consider an agenda item at any time, the Court concluded that discussions regarding whether to remove an agenda item did not implicate the Open Meeting Law. Thus, WCBC did not violate the Open Meeting Law by holding pre-meeting discussions on whether to remove the lobbying contract item from its agenda.

Next, Schmidt had argued that WCBC improperly reduced his time for public comment on the lobbying contract item from 3 minutes to 2 minutes. The Court noted that agenda for public bodies must include a period devoted to public comment, if any, and a discussion of those

comments. In this case, the January 11 agenda specifically allowed for public comment, which was limited to 3 minutes per person and was restricted to items not listed on the agenda. The minutes of the meeting demonstrated that Schmidt did have an opportunity to speak during the scheduled time after it had pulled the lobbying contract item; and WCBC later reopened public comments and allowed Schmidt to speak for an additional 2 minutes on the lobbying contract item. Schmidt was already aware that WCBC had pulled the lobbying contract item at the time of his initial public comment. Thus, he could have offered his views on the pulling of the item and the actual contract itself.

The Court then addressed “Special” meetings under NRS 244.090. Under both county and state law, WCBC may hold special meetings anywhere within Washoe County whenever it has sufficient business to come before the board, provided those meetings satisfy the notice and comment requirements of the Open Meeting Law.

Schmidt alleged that WCBC’s March 21 “caucus” meeting did not qualify as a “Special” meeting. However, WCBC’s agenda identified numerous points of business for its March 21 caucus, including (1) a review of agenda items for a joint meeting with the Reno and Sparks City Councils; (2) a review of agenda items for its regular meeting on March 22; and (3) discussions and directions to staff regarding a “legislative update.” Because these items constituted “sufficient business to come before the board,” the Court concluded that WCBC’s March 21 caucus qualified as a special meeting.

Because the March 21 caucus qualified as a special meeting, the Court then addressed Schmidt’s claim that WCBC violated the Open Meeting Law by failing to provide sufficient notice of items upon which it planned to take action. In this case, Schmidt attacks the substance of the agenda complaining that WCBC improperly decided to support one bill and oppose another bill without providing proper notice. The Court concluded that WCBC met the “clear and complete” requirement as a matter of law by (1) noting that it planned to discuss certain BDRs at its caucus meeting on March 21 or its regular meeting on March 22, and (2) providing a list of the specific BDRs in question on the Washoe County website 3 days before the caucus meeting.

On these grounds, the Court affirmed the trial court’s dismissal of Schmidt’s claims.

Conclusion

This case addressed a number of matters of first impression regarding Nevada’s Open Meeting Law, and clarified how it is to be interpreted.