

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DIVISION
CIVIL DIVISION

FILED
FT. SMITH DIST.

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Jusi Harrell
CIRCUIT CLERK SEB. CO.

CURTIS E. SORRELLS

PLAINTIFF

v.

NO. CV-15-607

DEANIE MEHL, SUSAN MCFERRAN, JEANNIE COLE,
YVONNE KEATON-MARTIN, and WYMAN WADE JR.,
in their official capacity as members of the Fort Smith Public
Schools Board of Education and not in their individual capacity;
FORT SMITH SCHOOL DISTRICT;
FORT SMITH PUBLIC SCHOOLS BOARD OF EDUCATION

DEFENDANTS

AFOIA COMPLAINT AND REQUEST FOR HEARING

Comes now the Plaintiff, Curtis E. Sorrells, and for his cause of action against the Defendants, Fort Smith School District and Fort Smith Public Schools Board of Education and the other named defendants who are all named only in their official capacity, states:

1. This is an appeal from a denial of rights under the Arkansas Freedom of Information Act ("AFOIA") pursuant to Arkansas Code Annotated § 25-19-107(a).

Parties, Jurisdiction, and Venue

2. Plaintiff Curtis Sorrells is an adult citizen of the State of Arkansas, whose address is 313 Rivercrest Drive, Fort Smith, Arkansas, 72903; he brings this action as a matter of right under Arkansas Code Annotated § 25-19-107. Plaintiff is a taxpayer who resides in the Fort Smith District of Sebastian County, Arkansas and who pays taxes that support the Fort Smith Public School District.

3. Defendants Deanie Mehl, Susan McFerran, Jeannie Cole, Yvonne Keaton-Martin, and Wyman Wade Jr., in their official capacity as members of the Fort Smith Public Schools Board of Education members and not in their individual capacity, are duly elected members of

the Fort Smith Public Schools Board of Education. The School Board members are tasked with complying with the open-meetings provisions of the Arkansas Freedom of Information Act, codified at Ark. Code Ann. § 25-19-106.

4. Defendant Fort Smith School District is a political corporation organized under the laws of the State of Arkansas.

5. Defendant Fort Smith Public Schools Board of Education is the governing body of the Fort Smith School District.

6. Dr. David Hunton, Susan McFerran, Yvonne Keaton-Martin, Jeannie Cole, Wyman Wade Jr., Dr. Deanie Mehl, and Rusty Owen are duly elected members of the Fort Smith Public Schools Board of Education. The Fort Smith Public Schools Board of Education is tasked with complying with the open-meetings provisions of the Arkansas Freedom of Information Act (“AFOIA”), codified at Ark Code Ann. § 25-19-106.

7. This Court has subject-matter jurisdiction pursuant to Ark. Code Ann. Section 25-19-107(a).

8. Venue lies in the Fort Smith District of Sebastian County, Arkansas, under Ark. Code Ann. § 25-19-107(a).

Factual Background

9. On Monday, June 22, 2015, members of the Fort Smith Public Schools Board of Education met at 5:30 p.m. in the Service Center Building for its regularly scheduled meeting. Notice of the regularly scheduled meeting was given. A copy of that notice is attached hereto as Exhibit A and incorporated herein.

10. Southside High School is a high school in Fort Smith, Sebastian County, Arkansas. High Schools in Arkansas typically have a school mascot and school fight song.

Southside High School first opened in the 1960s. Since its inception, it has used the song “Dixie” as its fight song and the “Rebel” as its mascot. Based on information and belief, on Monday, June 22, 2015, shortly before the regularly scheduled Board meeting, the members of the Fort Smith Public Schools Board of Education met informally and discussed and deliberated on the subject of prohibiting the use of the song Dixie as the Southside High School fight song and changing the Southside High School mascot from the Rebel. A secret informal caucus can result in a consensus being reached on a given issue, thus rendering the formal meeting held before the public a mere charade. *See, e.g., Harris v. City of Ft. Smith, 359 Ark. 355, 197 S.W.3d 461 (2004).*

11. At the Monday, June 22, 2015, Fort Smith Public Schools Board of Education meeting, the School Board members voted to spend 70 million dollars to expand and renovate five local schools, including Southside High School and ask voters to improve a millage increase in September 2016.

12. On June 22, 2015, a notice was sent out to various news media, notifying said news media, and which stated that: “The Fort Smith Board of Education will meet on Tuesday, June 23, 2015 at 5:30 p.m. in the Service Center, Building B, with the purpose of the meeting being the annual evaluation of the superintendent.” A copy of the notice is attached hereto as Exhibit B and incorporated herein.

13. A second media alert was sent to the news media on June 23, 2015 at 3:22 p.m. notifying the media that, “Members of the Fort Smith Public Schools Board of Education will meet today for the annual evaluation of Superintendent Benny Gooden. A fax regarding this **closed** meeting was sent yesterday.” A copy of the notice is attached hereto as Exhibit C and incorporated herein. The purpose of the notice was to lead members of the public and media into

believing that the meeting was solely to discuss a personnel issue and that the meeting would not be open to the public, or at least for the most part not open to the public, because it concerned a personnel issue.

14. Despite the notice which was designed to tell the public and media to not attend the meeting, on June 23, 2015, five members of the Fort Smith Public Schools Board of Education held a special and/or emergency meeting for the purpose of prohibiting the use of the song Dixie as the Southside High School fight song and to change the Southside mascot from the Rebel. Despite the fact that this was the purpose of the Fort Smith Public Schools Board of Education, no notice of the purpose was ever provided to the media, to taxpayers, or to any person other than the members of the Fort Smith Public Schools Board of Education who had secretive knowledge that such issue was going to be addressed and voted upon. A “tip” was sent to KFSM 5 News by an anonymous person(s) that members of the Fort Smith Public Schools Board of Education may be meeting to change the Southside High School fight song and mascot.

15. After convening, five members of the Fort Smith Public Schools Board of Education, including Deanie Mehl, Susan McFerran, Jeannie Cole, Yvonne Keaton-Martin, and Wyman Wade Jr., passed a motion to stop using Dixie as the Southside High School fight song in the 2015-2016 school year and to change the Southside mascot from the Rebel in the 2016-2017 school year. Shortly after the meeting, School Board member Susan McFerran told KFSM 5 News, “It’s official.”

16. Although the Fort Smith Public Schools Board of Education and the leadership has not stated the cost to change the Southside mascot from the Rebel in 2016-2017, principal Wayne Haver, who was not made aware of the fight song and mascot change before the vote was taken, estimated that the change of mascot will cost taxpayers between \$200,000 to \$500,000.

Further, the Board of Education has not informed the public as to where the money will come from, but it is presumed that the change of the Southside mascot in the school year 2016-2017 will be paid for by the millage increase, if it is passed by the voters in September 2016.

17. The Fort Smith Public Schools Board of Education's meetings on June 22, 2015 and June 23, 2015 were special meetings because Fort Smith Public Schools were not in session during the month of June 2015. See Ark. Code Ann. § 6-13-619. Furthermore, the cited statute does not permit two regular meetings on two consecutive days. Therefore, the meeting of June 23, 2015 was unequivocally a special meeting.

18. The Fort Smith School District has policies and procedures on Special Board Meetings which states: "Special meetings of the Board of Education shall be called by the President or any three members of the Board or when petitioned to do so by a petition in writing signed by fifty electors in the District No business shall be transacted at any special meeting of the Board which does not come within the purpose(s) set forth in the call for the meeting, unless all members of the Board are present and by majority vote agree to consideration of the additional items. *Each member of the general public shall be notified of the time, place and purpose of the special meeting in accordance with the established procedure.*" [emphasis added] A copy of the Policy and Procedure is attached hereto as Exhibit D and incorporated herein.

CLAIM: Violation of the Open-Meetings Provisions of the AFOIA

19. Plaintiff restates the facts and allegations in paragraphs 1 through 18, *supra*, as if laid out in full herein.

20. The Arkansas Freedom of Information Act (herein "AFOIA") states: "It is vital in a democratic society that the public business be performed in an open and public manner so that

the electors shall be advised of the performance of public officials and of the decisions that are reached in public activity and in making public policy. Toward the end, this [act] is adopted, making it possible for them, or their representatives to learn and report fully the activities of their public officials." As Founding Father James Madison said, "A Popular Government, without popular information, or the means of acquiring it is but a Prologue to a Farce or a tragedy, or perhaps both." Louis Brandeis and Woodrow Wilson stated, "Publicity is justly commended as a remedy for social and industrial diseases," Brandeis once wrote, and "[s]unlight is said to be the best of disinfectants..." Similarly, Wilson remarked that "[l]ight is the only thing that can sweeten our political atmosphere [and] open to view the innermost chambers of government."

21. Under AFOIA, "except as otherwise specifically provided by law, all meetings, formal or informal, special or regular, of the governing bodies of all municipalities, counties, townships, and school districts and all boards, bureaus, commissions, or organization of the State of Arkansas, except grand juries, supported wholly or in part by public funds or expending public funds, shall be public meetings." Ark. Code Ann. § 25-19-106(a).

22. AFOIA requires that a governing body give notice of special or emergency meetings at least two hours in advance to media organizations that have requested notice. Ark. Code Ann. § 25-19-106(b)(2).

23. The special meeting held on June 23, 2015 violated AFOIA and the policies and procedure of the Fort Smith School District in that: (a) business at the special meeting was transacted that did not come within the purpose set forth in the call for meeting, said call attached hereto as Exhibit B and C; (b) no notice of the special meeting to discuss the Southside High School fight song and mascot was given by the Fort Smith School District to media

organizations; and (c) the public was led to believe that the meeting of June 23, 2015 was a closed meeting to only evaluate the superintendent.

24. The informal meeting held before the regularly scheduled meeting on June 22, 2015 violated the AFOIA in that: (a) a governing body must hold a public meeting even if its purpose is to discuss proposals or gather information; (b) the Freedom of Information Act entitles the public to learn not only of actions taken on particular matters, but the reasons for the actions and the Freedom of Information Act reaches every step of the decision-making process, not simply the point at which the decision is announced. *See* John J. Watkins & Richard J. Peltz, “The Arkansas Freedom of Information Act” (5th ed.), at 297 (citing *Arkansas Gazette Co. v. Pickens*, 258 Ark. 69, 522 S.W.2d 350 (1975)).

25. In the event that there is no dispute about the fact that the Fort Smith Public Schools Board of Education is a proper party and has the capacity to be sued in this cause of action, Plaintiff will dismiss the Fort Smith School Board members who have been sued in their official capacity and not their individual capacity.

Prayer for Relief

WHEREFORE, based on the foregoing, Plaintiff prays that this Court take jurisdiction of this cause and to set, within seven days, a hearing on this matter pursuant to Ark. Code Ann. § 25-19-107(b); invalidate, pursuant to Ark. Code. Ann. § 25-19-107(c), the action taken at the meeting of June 23, 2015; order, pursuant to Ark. Code. Ann. § 25-19-107(c), that future meetings of the Fort Smith Public Schools Board of Education be held in compliance with the Freedom of Information Act and Fort Smith School District policies and procedures; award Plaintiff’s reasonable attorney’s fees and litigation expenses pursuant to Ark. Code Ann. § 25-19-17(d); and grant all other relief to which Plaintiff may be entitled.

Respectfully submitted,



Joey McCutchen (No. 88-045)
McCutchen Buckley - The Law Firm
P.O. Box 1971
Fort Smith, AR 72902-1971
Phone 479-783-0036
Facsimile 479-783-5168

Service of any documents by e-mail will not be received by counsel for the Plaintiff unless copied to pam@mccutchenlawfirm.com



Katy Valdez <kvaldez@fortsmithschools.org>

Media Notice

2 messages

Nadine Brooks <nbrooks@fortsmithschools.org>
To: Katy Valdez <kvaldez@fortsmithschools.org>

Fri, Jun 19, 2015 at 9:57 AM

The Fort Smith Board of Education will meet on Monday, June 22 at 5:30 p.m. in the Service Center, Building B for its regularly scheduled meeting.

The agenda is attached.

Nadine Brooks
Office Manager, Superintendent's Office
Fort Smith Public Schools
P.O. Box 1948
Fort Smith, AR 72902
479-785-2501
479-785-1722 Fax

june2015agenda.pdf
43K

Katy Valdez <kvaldez@fortsmithschools.org>
To: 40/29 <news@4029tv.com>, 5 News <news@kfsm.com>, "Brenda Bernet, Democrat Gazette" <bbernet@nwaonline.com>, Brian Sanderford <bsanderford@swtimes.com>, "Chad Hunter, Times Record" <chunter@swtimes.com>, "Dave Hughes, Democrat Gazette" <dhughes@nwaonline.com>, Jonathan Rozelle 40/29 <jrozelle@hearst.com>, Judi Hansen <jhansen@swtimes.com>, Meredith Baldwin <meredith.baldwin@kfsm.com>, "Michael Tilley, The City Wire" <mtilley@thecitywire.com>, Pedro Rivera <privera2@hearst.com>, Tina Dale <tdale@swtimes.com>, Nadine Brooks <nbrooks@fortsmithschools.org>

Fri, Jun 19, 2015 at 3:38 PM

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june2015agenda.pdf
3K



MODE = MEMORY TRANSMISSION

START=JUN-21 21:26

END=JUN-21 21:30

FILE NO.=824

STN NO.	COMM.	STATION NAME/EMAIL ADDRESS/TELEPHONE NO.	PAGES	DURATION
001	OK	SWTR	001/001	00:00:15
002	OK	KFSM	001/001	00:00:23
003	OK	KHBS	001/001	00:00:23
004	OK	KFPW	001/001	00:00:16
005	OK	KZBB	001/001	00:00:15
006	OK	KTCS	001/001	00:00:15

-FORT SMITH PUBLIC SCHOOLS-

***** e-STUDIO190F ***** -SUPT. OFFICE - ***** 479 785 1722- *****



Office of the Superintendent

3205 Jenny Lind - P.O. Box 1948
Fort Smith, Arkansas 72902-1948
479-785-2501
Fax: 479-785-1722

TO: News Media

FROM: Zena Featherston Marshall, Director of
Communication and Community Partnerships

DATE: June 22, 2015

SUBJECT: Board of Education

The Fort Smith Board of Education will meet on Tuesday, June 23, 2015 at 5:30 p.m. in the Service Center, Building B. The purpose of the meeting is the annual evaluation of the superintendent.

ZFM/nb





Office of the Superintendent

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ZFM/nb



Katy Valdez <kvaldez@fortsmithschools.org>

Media Alert: Board of Education to Meet

1 message

Katy Valdez <kvaldez@fortsmithschools.org>

To: 40/29 <news@4029tv.com>, 5 News <news@kfsm.com>, "Brenda Bernet, Democrat Gazette" <bbernet@nwaonline.com>, Brian Sanderford <bsanderford@swtimes.com>, "Chad Hunter, Times Record" <chunter@swtimes.com>, "Dave Hughes, Democrat Gazette" <dhughes@nwaonline.com>, Jonathan Rozelle 40/29 <jrozelle@hearst.com>, Judi Hansen <jhansen@swtimes.com>, Meredith Baldwin <meredith.baldwin@kfsm.com>, "Michael Tilley, The City Wire" <mtilley@thecitywire.com>, Pedro Rivera <privera2@hearst.com>, Tina Dale <tdale@swtimes.com>

Tue, Jun 23, 2015 at 3:22 PM

Members of the FSPS Board of Education will meet today for the annual evaluation of Superintendent Benny Gooden. A fax regarding this closed meeting was sent yesterday.

Katy Valdez
Communication Specialist
Fort Smith Public Schools
Phone: (479) 785-2501, Ext. 1302
Fax: (479) 785-1722



SPECIAL BOARD MEETINGS

Special meetings of the Board of Education shall be called by the President or any three members of the Board or when petitioned to do so by a petition in writing signed by fifty electors in the District (*A.C.A. 80-507*). No business shall be transacted at any special meeting of the Board which does not come within the purpose(s) set forth in the call for the meeting, unless all members of the Board are present and by majority vote agree to the consideration of the additional items.

Each member of the Board and the general public shall be notified of the time, place and purpose of the special meeting in accordance with the established procedure.

Approved 1-24-2000
Supersedes 1420 dated 10-27-75

