STATE OF MICHIGAN

COURT OF APPEALS

SAMUEL MUMA,

Plaintiff-Appellee,

v

CITY OF FLINT FINANCIAL REVIEW TEAM, CITY OF FLINT EMERGENCY MANAGER, GOVERNOR, and STATE TREASURER,

Defendants-Appellants.

UNPUBLISHED
May 21, 2012

No. 309260
Ingham Circuit Court
LC No. 12-000265-CZ

Before: WHITBECK, P.J., and O'CONNELL and M. J. KELLY, JJ.

PER CURIAM.

Defendants appeal by right from the trial court's order granting declaratory judgment and permanent injunctive relief to plaintiff Samuel Muma. On appeal, the dispositive question is whether the trial court correctly determined that the Open Meetings Act[1] applies to the City of Flint Financial Review Team (Flint Financial Review Team). Because we conclude that the Open Meetings Act does not apply to the Flint Financial Review Team, we reverse and remand for entry of judgment in favor of defendants.

I. BASIC FACTS

On September 12, 2011, the State Treasurer provided the Governor with a preliminary review of the City of Flint's financial condition, as permitted by the Local Government and School District Fiscal Accountability Act.[2] (This Act is commonly referred to as the Emergency Financial Manager Act or "Act 4" based on its public act number, which is 2011 PA 4. We discuss provisions of this Act related to a review team created under that act in more detail in our opinion also issued today in *Davis v City of Detroit Financial Review Team*, ___ Mich App ___; ___ NW2d ___ (2012).) The State Treasurer concluded in his report that the City of Flint was in a state of probable financial stress.[3] As a result of the State Treasurer's finding, on

[1] MCL 15.261 *et seq.*

[2] MCL 141.1501 *et seq.*

[3] See MCL 141.1512.

September 30, 2011, the Governor appointed the Flint Financial Review Team.[4] The Flint Financial Review Team held five meetings in October and November 2011, that were not open to the public. It is undisputed that enough members of the team were present at each of the five meetings to constitute a quorum.

The Flint Financial Review Team filed a report with the Governor on November 7, 2011. In the report, the Flint Financial Review Team concluded that a local government financial emergency existed within Flint and that no satisfactory plan existed to resolve the emergency. The Flint Financial Review Team further recommended the appointment of an emergency financial manager to resolve the emergency.

In a November 8, 2011 letter, the Governor advised Flint's mayor and city council that he had determined that Flint had a local government financial emergency and that no satisfactory plan existed to resolve the emergency. Neither the mayor nor city council requested a hearing regarding the Governor's determination of a financial emergency in Flint. The Governor appointed defendant City of Flint Emergency Manager Michael K. Brown to serve as Flint's emergency manager, and he began his service on December 1, 2011.

In March 2012, Muma sued defendants in the Ingham Circuit Court. Muma alleged that the Flint Financial Review Team was a public body subject to the Open Meetings Act and that it had held meetings and taken actions in violation of the Open Meetings Act. Specifically, Muma asked the trial court to invalidate all decisions made in violation of the Open Meetings Act and to enjoin future noncompliance. Muma moved for a temporary restraining order and preliminary injunctive relief on March 15, 2012. The trial court granted the motion and, on the same day, it entered a temporary restraining order prohibiting Emergency Manager Brown "from taking any action in regard" to Flint "or action on behalf" of Flint "in any manner."

The trial court held a hearing on Muma's motion for a preliminary injunction on March 20, 2012. At that hearing, the trial court stated that it believed the Flint Financial Review Team to be "a body that should comply with the Open Meetings Act." The trial court also noted that "not one word" of the Emergency Financial Manager Act deals with the Open Meetings Act and the trial court stated that it had "to presume that the legislature wanted everyone to comply with the Open Meetings Act." The trial court indicated that it would invalidate the relevant decisions of the Governor and Emergency Manager Brown and would reinstate the powers of Flint's mayor and city council. In addition, the trial court awarded Muma attorney fees and costs. The trial court also decided that it would impose a fine of $1,000, although it did not expressly address the issue of whether any defendant had intentionally violated the Open Meetings Act. The trial court additionally denied defendants' request for a stay of its decision.

Although the March 20, 2012 hearing was to consider Muma's request for a preliminary injunction, the trial court nevertheless proceeded to enter a declaratory judgment and permanent injunction on March 23, 2012. In that judgment and permanent injunction, the trial court declared that (1) the October and November 2011 meetings of the Flint Financial Review Team

[4] See MCL 141.1512(3).

violated the Open Meetings Act; (2) defendants' noncompliance with the Act impaired the rights of the public under the act; (3) all actions, determinations, or decisions of the Flint Financial Review Team were invalid under the Open Meetings Act,[5] and that the Governor's actions and decisions, along with those of Emergency Manager Brown, which were made with respect to Flint after October 5, 2011, were also invalidated; and (4) Flint's mayor and city council were "reinstated."

The trial court further permanently enjoined defendants, any person appointed by them, and any other person acting on their behalf from taking any action reserved to the mayor and city council to govern and administer Flint under its charter and ordinances and permanently enjoined further noncompliance with the Open Meetings Act. The trial court also assessed defendants $1,000 in exemplary damages, jointly and severally, for intentional violation of the Open Meetings Act and awarded Muma $15,612.60 in attorney fees and $525 in costs. Defendants appealed to this Court on the same day.

On March 26, 2012, this Court issued an order setting an expedited briefing schedule and granting defendants' motion for stay pending appeal. Accordingly, this Court authorized Emergency Manager Brown to exercise his powers during the pendency of the present appeal. This Court retained jurisdiction of the appeal and gave the order immediate effect.

II. APPLICABILITY OF THE OPEN MEETINGS ACT

A. STANDARD OF REVIEW

Defendants argue that the trial court erred when it determined that they were "public bodies" subject to the Open Meetings Act. This Court reviews de novo issues of statutory construction.[6]

B. DISCUSSION

A central issue in this case is whether the Open Meetings Act applies to the Flint Financial Review Team. For the reasons set forth in our opinion also issued today in *Davis v City of Detroit Financial Review Team*, ___ Mich App ___; ___ NW2d ___ (2012), we hold that the Flint Financial Review Team, as a review team for a municipal government created under the Emergency Financial Manager Act, is not a "public body" subject to the Open Meetings Act. Thus, the trial court erred when it determined otherwise and erred when it concluded that the Flint Financial Review Team had violated the Open Meetings Act.

The trial court also granted permanent injunctive relief barring all defendants, including the Governor, State Treasurer, and Emergency Manager Brown, from further noncompliance with the Open Meetings Act. However, as we also discuss in detail in our opinion in *Davis*, the Governor and the State Treasurer in their individual executive capacities are not public bodies

[5] Specifically MCL 15.270(2).

[6] *Driver v Naini*, 490 Mich 239, 246; 802 NW2d 311 (2011).

under the Open Meetings Act and, thus, are also not subject to the Open Meetings Act in the context of this case.[7]

Emergency Manager Brown is also not subject to the Open Meetings Act. Muma argues that, in assuming what had been duties of the Flint City Council—which is clearly a public body under the Open Meetings Act—Emergency Manager Brown must also be subject to the Open Meetings Act in carrying out those duties. We reject that position on the basis of this Court's holding in *Craig v Detroit Public Schools Chief Executive Officer*.[8] In that case, this Court held that the Chief Executive Officer of the Detroit Public Schools was not required to comply with the Open Meetings Act. Like Emergency Manager Brown acting in place of the Flint City Council in the present case, the Chief Executive Officer in *Craig* operated under a statutory scheme in which he "essentially [stood] in the shoes of the former school board."[9]

But this Court, nevertheless, rejected the argument in *Craig* that the Chief Executive Officer had to comply with the Open Meetings Act because he stepped into the shoes of the school board. Rather, this Court held that, in light of the Michigan Supreme Court opinion in *Herald Co v Bay City*,[10] the Chief Executive Officer was not a "public body" under the Open Meetings Act because he was an individual acting in his official capacity.[11] Reading the Open Meetings Act and the other relevant statute in *Craig* together, this Court concluded that the Chief Executive Officer was required "to perform all the duties and obligations of the former school board, but because [the Chief Executive Officer] is an individual and not a 'public body' within the meaning of the[Open Meetings Act], he is simply not able or required to carry out these functions at open meetings."[12]

Accordingly, we reject Muma's effort to distinguish *Craig* on the ground that the Chief Executive Officer was carrying out his executive duties, not the duties of the school board. Instead, *Craig* makes clear that, when a single executive, such as the Chief Executive Officer in *Craig* or Emergency Manager Brown in this case, assumes the duties of a public body pursuant to a statute that sets out that executive's duties, that single executive is not a public body subject to the Open Meetings Act.

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[7] See *Herald Co v Bay City*, 463 Mich 111, 129-131; 614 NW2d 873 (2000) (explaining that the term public body "connotes a collective entity" and holding that "an individual executive acting in his executive capacity is not a public body for purposes of the [Open Meetings Act]").

[8] *Craig v Detroit Pub Schs Chief Executive Officer*, 265 Mich App 572, 579-580; 697 NW2d 529 (2005).

[9] *Id*. at 577.

[10] See *Herald Co*, 463 Mich 111.

[11] *Craig*, 265 Mich App at 578-579.

[12] *Id*. at 579-580.

It necessarily follows that defendants are not public bodies subject to the Open Meetings Act and, accordingly, that the trial court erred in granting declaratory and injunctive relief in favor of Muma as well as in awarding Muma attorney fees and costs. However, we further underscore that, even had the Open Meetings Act applied, there was no basis for the trial court to grant a permanent injunction against defendants rather than limiting its judgment to declaratory relief. As set forth by the Michigan Supreme Court in *Straus v Governor*:[13]

> [D]eclaratory relief normally will suffice to induce the legislative and executive branches, the principal members of which have taken oaths of fealty to the constitution identical to that taken by the judiciary, Const 1963, art 11, § 1, to conform their actions to constitutional requirements or confine them within constitutional limits. *Durant v Michigan*, 456 Mich 175, 205; 566 NW2d 272 (1997). Only when declaratory relief has failed should the courts even begin to consider additional forms of relief in these situations. *Id.* at 206.

There was also no factual basis to support the trial court's finding that any defendant *intentionally* violated the Open Meetings Act. Obviously, it is possible for a party to violate the Open Meetings Act without intentionally doing so. A violation of the Open Meetings Act only rises to the level of being intentional if the party violating the Open Meetings Act had a subjective desire to violate that act or knowledge that he or she was doing so.[14] There is no record evidence in this case to support a conclusion that any defendant acted with the requisite desire or knowledge. In light of our holdings that defendants did not violate the Open Meetings Act in this case, it is unnecessary to reach defendants' arguments regarding the Open Meetings Act's limitations period or the doctrine of laches.

Reversed and remanded for entry of judgment in favor of defendants. We do not retain jurisdiction. We further order this judgment to be given immediate effect[15] and, given the important public questions involved, order that none of the parties may tax their costs.[16]

/s/ William C. Whitbeck
/s/ Peter D. O'Connell
/s/ Michael J. Kelly

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[13] *Straus v Governor*, 459 Mich 526, 532; 592 NW2d 53 (1999).

[14] *People v Whitney*, 228 Mich App 230, 256; 578 NW2d 329 (1998).

[15] MCR 7.215(F)(2).

[16] MCR 7.219(A).