

STATE OF MICHIGAN
COURT OF APPEALS

J. THOMAS FINN, DANIEL L. BOWERS, and
W. FRANK TIMMONS,

UNPUBLISHED
December 20, 2002

Plaintiffs-Appellants,

v

FLINT SCHOOL BOARD OF EDUCATION,

No. 237105
Genesee Circuit Court
LC No. 01-070159-CZ

Defendant-Appellee.

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In November 2000, James Ray, the Superintendent of the Flint school system, advised Rachel Haviland, defendant's president, that he could no longer serve effectively in his position. Haviland directed Kendall W. Williams, defendant's attorney, to research the terms of the employment contract between defendant and Ray. Williams entered into discussions with Ray's attorney regarding the terms of a severance package. During this period, Haviland had individual discussions with other board members regarding Ray's desire to terminate his employment. On January 16, 2001, defendant's Human Resources for Learning Committee (HRLC) met in closed session to discuss Ray's performance. Williams prepared a memorandum setting forth the proposed terms under which Ray's employment would be terminated. On January 19, 2001, the HRLC and the board met in back-to-back open sessions and approved the terms of the severance package.

Plaintiffs, Flint residents, filed a complaint for declaratory and injunctive relief alleging that the discussions and negotiations regarding termination of Ray's employment conducted prior to January 19, 2001, violated the Open Meetings Act (OMA), MCL 15.261 *et seq.*, in that board members and others deliberated and made decisions regarding Ray's employment in secret. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that the complaint failed to allege a violation of the OMA and that no genuine issue of fact existed as to whether the OMA was violated. The trial court granted defendant's motion, finding that the undisputed evidence showed that all votes taken by the board regarding Ray's employment were taken in open, duly noticed meetings.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Under the OMA, a "meeting" is the convening of a public body at which a quorum is present for the purpose of deliberating or rendering a decision on a public policy. MCL 15.262(b). A "decision" is a determination or disposition of a matter on which a vote by a public body is required and by which a public body effectuates or formulates public policy. MCL 15.262(d). All deliberations of a public body constituting a quorum of its members must occur at a meeting open to the public. MCL 15.263(3).

Plaintiffs argue the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm. Haviland's initial direction to Williams to research the terms of the employment contract between Ray and the school district was authorized by defendant's by-laws, which allow the board's president to contact the board's attorney regarding a legal matter. The closing of the meeting of the HRLC at which Ray's performance was discussed was authorized by statute. MCL 15.268(a). Informal discussions among members of a public body regarding an issue before the body do not violate the OMA if no decision regarding the issue is made during the discussions and the intent of the discussions is not to violate the OMA. *St Aubin v Ishpeming City Council*, 197 Mich App 100, 102-104; 494 NW2d 803 (1992). It was undisputed that the January 19, 2001, meetings of the HRLC and the Board at which the severance package was approved were duly noticed and open to the public.

This case is distinguishable from *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211; 507 NW2d 422 (1993), on which plaintiffs rely. In that case the University of Michigan's Board of Regents attempted to evade the requirements of the OMA during the process of selecting a new university president. The board appointed itself as the selection committee, entrusted one regent (acting alone) to pare down the list of candidates, devised a system of telephone calls and sub quorum meetings to gather opinions, and had sub quorum groups of regents interview candidates. The *Booth* Court held that the board's actions violated the OMA in that the board was clearly a public body, and that no individual or sub group had the authority to narrow the field of candidates, make recommendations, or select a president. *Id.*, 226-231.

Here, no evidence showed that the members of defendant board sought to devise a plan to circumvent the requirements of the OMA. Plaintiffs did not demonstrate that individual board members or sub quorum groups made decisions regarding the termination of Ray's employment or the approval of a severance package prior to the January 19, 2001, meetings. The evidence showed that the discussions among members of the board were of the type that did not contravene the OMA. See *St Aubin, supra*. Plaintiffs failed to demonstrate the existence of a genuine issue of fact regarding whether defendant's actions violated the OMA; therefore, summary disposition was correctly granted.

Affirmed.

/s/ Donald S. Owens
/s/ William B. Murphy
/s/ Mark J. Cavanagh