

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RONALD J. SCHWAB,

Plaintiff-Appellant,

v

STANDISH-STERLING COMMUNITY  
SCHOOL DISTRICT BOARD OF EDUCATION,

Defendant-Appellee,

and

CLAUDE L. INCH,

Defendant.

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UNPUBLISHED

November 25, 2008

No. 279257

Arenac Circuit Court

LC No. 06-009841-CZ

Before: Saad, C.J., and Sawyer and Beckering, JJ.

PER CURIAM.

Plaintiff brought suit against the Standish-Sterling Community School District Board of Education and the superintendent, Claude Inch, alleging that defendants violated the Michigan's Open Meetings Act (OMA), MCL 15.261 et seq., by failing to record meeting minutes, provide notice of meetings, make certain meetings open to the public, and knowingly implementing a hiring process in violation of the OMA. The trial court granted summary disposition in favor of defendants. Plaintiff appeals the court's decision with respect to the school board. We reverse in part and affirm in part.

In February 2006, the board approved a job description for an Assistant Community Education/Athletic Director. Pursuant to board policy, the responsibility to review job applications and make hiring recommendations was given to the superintendent. The board retained the authority to ultimately vote on the hiring of the Assistant Community Education/Athletic Director. The superintendent reduced an applicant pool from approximately forty to six. The superintendent then formed a "Hiring Committee" to assist with the interviews. The Hiring Committee consisted of five members. Two of the members were also board members that eventually voted on the hiring of the Assistant Community Education/Athletic Director. The interviews were not held publicly and the superintendent would not allow plaintiff to attend.

First we address plaintiff's argument that the trial court erred in finding that the superintendent and the Hiring Committee were not subject to the OMA. We agree with plaintiff. The OMA provides in part:

(1) All meetings of a public body shall be open to the public and shall be held in a place available to the general public. . . .

(2) All decisions of a public body shall be made at a meeting open to the public.

(3) All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public except as provided . . . .  
[MCL 15.263.]

The threshold question is whether the superintendent and the Hiring Committee are public bodies under the act. The OMA defines a "public body" to include a "committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority . . . ." MCL 15.262(a).

Defendant argues that this matter is similar to the situation in *Herald Co v Bay City*, 463 Mich 111; 614 NW2d 873 (2000), in which a city charter assigned a city manager the task of recommending a new fire chief. In *Herald*, the city manager created a committee to help make the recommendation. *Id.* at 115. Ultimately, the Court concluded that neither the city manager nor his committee were public bodies because the city manager was an individual and had independent authority from the city charter. *Id.* at 129-136. The city commission did not delegate the authority. *Id.* at 132. The city manager delegated the city manager's authority. *Id.* at 135. The Court held that "because the city manager was not subject to the OMA, *Booth [Newspapers, Inc v Univ of Mich Bd of Regents]*, 444 Mich 211; 507 NW2d 422 (1993),] has no application." *Herald, supra* at 135. Unlike the city manager in *Herald*, in this case, the superintendent obtained the authority to make a recommendation from a public body, the board.

Holding that the superintendent and the Hiring Committee were public bodies is sufficiently supported by the Court's interpretation of the OMA in *Booth*. In *Booth*, various regents and subquorum groups took on the tasks of narrowing a field of applicants and conducting interviews without holding public meetings. The Court held that these regents and subquorum groups were public bodies subject to the OMA. Here the Board delegated the authority to narrow the field and make recommendations, retaining the ultimate authority to vote, and two of its Board members were members of the Hiring Committee. Like the regents and subquorum groups in *Booth*, the superintendent and the Hiring Committee had no independent authority to carry out these functions. See *Herald, supra* at 134. "*Booth* precluded an attempt by a public body to evade the OMA (and thus circumvent legislative intent) by delegating its authority." *Herald, supra* at 136. A public body cannot be allowed to delegate its authority so that finalist selections and interviews are conducted privately with two board members present and then later vote on the one final applicant in a public meeting. For these reasons, we find that the superintendent and the Hiring Committee were public bodies subject to the OMA. "This Court's failure to recognize this fact would undermine the legislative intent to promote responsible and open government." *Booth, supra* at 229.

The only other committees that plaintiff specifically alleges violate the act are the Extracurricular Committee and the Curriculum Committee. Clearly there is potential for violating the OMA, but plaintiff has not alleged any specific facts with respect to recommendations made by either committee that would allow this Court to decide whether its recommendations were decisions. Accordingly, we need not determine whether the committees were public bodies subject to the OMA, and we affirm the trial court's decision as to these committees.

For the reasons stated, we reverse the trial court's decision that the superintendent and the Hiring Committee were not public bodies subject to the OMA. In regard to the other committees, we affirm the trial court's decision.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Jane M. Beckering