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THE CIRCUIT COURT OF THE STATE OF OREGON
TWENTY-FIFTH JUDICIAL DISTRICT
YAMHILL COUNTY

FILED

JAN 25 2024

Yamhill County Court

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CIRCUIT COURT JUDGE

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January 25, 2024

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Re: Beth Woolsey, Greg Woolsey, Jeff McNeal, Kathleen McNeal, Meghan Rogers-Czarnecki, Stefan Czarnecki, and Elizagbeth Gemeroy v. Newberg School District 29J, Trevor DeHart, Renee Powell, Brian Shannon, and Dave Brown, 21CV41198

Dear Counsel:

The above case came before the court for a trial on November 28, 29 and 30, 2023. At the end of the plaintiffs' case the court granted in part and denied in part the defendants' Motions for Judgment pursuant to ORCP 54 (B)(2). The court granted the defendants' motions except for the following claim: that prior to the August 24, 2021, Board meeting, the defendants met as a quorum in private for the purpose of discussing or deliberating to retain Mr. Tyler Smith as supplemental legal counsel at that Board meeting, and that the defendants' conduct was an intentional disregard of the law and/or wilful misconduct. The trial proceeded and after the presentation of evidence by both sides, the court took the remaining claim under advisement.

It is the intent of public meetings law that decisions of governing bodies be arrived at openly. The law regulates the decision-making process of governing bodies. ORS 192.630(2) restricts the ability of a quorum of a governing body to meet outside of the context of a formal meeting to deliberate toward a decision or make a decision.

Meeting as a quorum can occur even if a quorum meets by means of seriatim, separate, or a series of communications. The quorum members need not be all present at the same time or place. The evidence would need to show, however, that each member of the quorum communicated with the other members of the quorum for the purpose of reaching a decision or deliberating toward a decision on a board issue. The evidence would need to show that communications were exchanged with the intent of coming to an agreement on a board issue. This can be satisfied even if the members of the quorum are not present at the same time, either in person or electronically.

The court may consider direct evidence, circumstantial evidence, or both. Circumstantial evidence, also known as indirect evidence, is the proof of a chain of circumstances pointing to the existence or nonexistence of a certain fact. The court may draw inferences and reach conclusions from the evidence, provided that the inferences and conclusions are reasonable and are based on common sense and experience.

Here, the issue for the court is whether the plaintiffs' proved and met their burden of proof, by a preponderance of the evidence, to establish that the defendants met privately as a quorum of the board. More specifically, whether the defendants violated Oregon's public meetings law by engaging in a series of private communications for the purpose to decide to hire Tyler Smith as supplemental legal counsel for the Board. The court considered the testimony of witnesses, exhibits admitted, reviewed relevant case law, and arguments of counsel. Based on the evidence at trial, the court finds as follows.

On July 21, 2021, Mr. DeHart sent a text: "long time since I have heard from many of you...are you still alive." Mr. Shannon responded: "Group texts are dangerous now that the two of you are sworn in...can't talk about board business with 4 or more if we're not in a public meeting. One-on-one conversations are still OK."

On or around August 10, 2021, the defendants voted to implement a flag policy at a Board meeting. Following that Board action there was what was described as a big negative fallout including the filing of a tort claim notice. Around that time Mr. Dehart told Mr. Brown that "we needed an attorney who specializes in constitutional law." Mr. DeHart said that he and the other three Board members, who he described as the conservative board members, were getting death threats and other negative social and business repercussions from the flag policy.

After the flag policy was enacted, Mr. Shannon consulted with an attorney, Mr. Randy Harvey, regarding possibly filing a defamation lawsuit regarding the events following the flag policy. Mr. Harvey recommended Mr. Tyler Smith to Mr. Shannon because he specializes in "this kind of law."

Around August 18, 2021, Mr. Brown called attorney Mr. Tyler Smith to schedule a lunch meeting. Ms. Powell was included in this lunch meeting. Mr. Smith remembers Mr. Brown and Ms. Powell showing him a paper from Mr. Shannon and asking if this was legal. The day following the lunch meeting, phone records indicate that Mr. DeHart had a phone call with Ms. Powell and Mr. Brown.

A few days after the lunch meeting, around August 21, 2021, Mr. Smith wrote a legal research memo for Mr. Brown and Ms. Powell. Mr. Smith said that he sent them this memo as useful information and to help Mr. Brown and Ms. Powell make a decision to hire him. The billing records of Mr. Smith on 8/20/21 indicate the following: "Research and draft memo requested by School Board on contours of first amendment law in relation to teachers, students, staff and schools. Continue researching and draft advice memo. 5 hours."

The weekend of August 21, 2021, Ms. Powell sent Mr. Smith an e-mail and asked him to come to the Board meeting on August 24, 2021. Mr. Smith assumed it was for the purpose of being hired.

A governing body of a public body, such as a school board, may hold an executive session to include the following issues: to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed." ORS 192.660(2)(h).

The Board knew that the purpose of the August 24, 2021, Board meeting was for the Board to obtain legal consultation about recent legal issues, including issues surrounding the flag policy.

On August 23, 2021, Mr. Shannon was sent Mr. Smith's legal memo. Mr. Shannon and Ms. Powell had a phone call and Ms. Powell said that she and Mr. Brown had met with Mr. Smith, that he had written a memo that the flag policy was constitutional.

That same day Mr. Shannon talked with Mr. DeHart. Mr. Shannon said he knew he would be chairing the meeting the following evening because Mr. Brown was ill. They talked about the flag policy issues. Mr. DeHart said that he and Mr. Shannon may have talked about Mr. Smith and the upcoming Board meeting. Mr. DeHart said he had heard that Mr. Smith was a Christian who specializes in constitutional law. He had heard Mr. Smith was going to be at the meeting at executive session but heard he may not be allowed in. On August 23, 2021 at 5:28 PM, Mr. Brown texted Mr. Shannon to notify him that Dr. Morlock didn't want attorney Mr. Smith at the meeting and that he did he want additional legal counsel at the meeting. The text indicated that Mr. Brown had told Ms. Powell and Mr. DeHart this information as well.

On August 24, 2021, Mr. Smith said he talked with Mr. Shannon. Mr. Smith told Mr. Shannon that he was told that the Superintendent was not going to let him attend the Board meeting that evening. Mr. Smith told Mr. Shannon that they could vote to overcome an obstructionist Superintendent.

On August 24, 2021, Mr. Shannon had a phone call with Mr. DeHart to confirm he was going to be at the meeting that evening. Mr. Shannon also had a phone call with Ms. Powell to confirm that she was going to be at the meeting that evening.

On August 24, 2021 at 5p.m. the Board meeting was to begin. At 5:01p.m., when Mr. Brown was not at the Board meeting zoom video call, Mr. Shannon sent Mr. Brown a text that said, "meeting time". Mr. Brown's response was, "I'm sick. I'll be in quickly." Mr. Shannon's response was "We're screwed if you don't get here right now."

According to the minutes of the August 24, 2021 meeting, Mr. Shannon and Ms. Powell moved to hire Tyler Smith & Associates as an outside supplemental attorney to represent the Board. The recording of that special meeting shows that Mr. DeHart starts right off by telling the other Board members "so we want additional counsel who has expertise in the decisions we made...." The written minutes of that meeting reflect that Mr. Dehart also said, "they are asking for a second opinion because lawyers can disagree and that's why we have Mr. Smith."

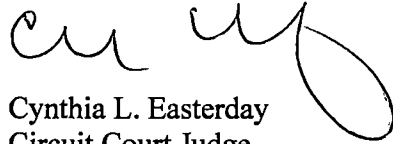
There was no discussion among the Board whether to bring in Mr. Smith, just the defendants trying to convince the other three Board members why it's necessary.

Later that evening, half-way through the Board retreat, when the defendants were asked by Ms. Piros if the defendants had planned to bring in and hire Mr. Smith, there was silence among the defendants. Ms. Powell then indicated that "I was the one who wanted to have an attorney because of the attacks and the harassment..." Mr. DeHart said, "I knew that Ty Smith was going to sit in on the meeting tonight, well I didn't know that for sure because it sounded like he wasn't going to be allowed to be in the meeting." Mr. Shannon later said "I'm not sorry about what we did tonight. Dave sought out this attorney, I admit he probably should have notified you guys...."

The court finds that the plaintiffs' evidence is sufficient, by a preponderance of the evidence standard, to establish that the defendants met as a quorum of the Board privately on the above issue. The court finds that the defendants were trying to get around the public meetings law in order to have Mr. Smith, an attorney aligned with their legal objectives, to provide legal consultation. Even during the meeting, the defendants use the term "we" and "they" collectively. The court also finds that the conduct was an intentional disregard of the law and/or wilful misconduct. Therefore, the defendants shall repay to the Newberg School District all monies the District paid to Tyler Smith by the District.

Ms. Hopkins and Ms. Snyder you may prepare the trial order and judgment.

Sincerely,



Cynthia L. Easterday
Circuit Court Judge

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