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MESSAGE FROM THE
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SIDEBAR:

- The Ombudsman for Public Access is Staff Attorney Danee Garone.
- Open meeting law and public records law materials and updates are [available on our website](#).
- [Click here](#) to view our open meeting law booklet.
- [Click here](#) to view our public records law booklet.
- Review past [Public Access Newsletters](#).
- [Upcoming Training/ Outreach](#).
- May 4 - 10:00 AM -- Virtual Open Meeting Law Training for AZ Water Protection Fund
- In-person trainings suspended.
- Contact Danee Garone for more information.



From the Office of the Arizona Ombudsman — Citizens' Aide

The Public Record

State Ombudsman Dennis Wells

APRIL 2021

Court of Appeals: Taxpayers May Sue Under Open Meeting Law

In October 2020, the Arizona Court of Appeals held that a “citizen taxpayer is a ‘person affected by’ expenditures of public funds arising from violations of open-meeting laws” and, therefore, has standing to sue a public body to compel compliance with the open meeting law. [Welch v. Cochise County Bd. of Supervisors](#), 250 Ariz. 186, ¶ 14 (App. 2020).

The Cochise County Board of Supervisors had appointed one of its members to fill a justice of the peace vacancy. The plaintiff filed suit alleging an open meeting law violation and, in part, asking the court to render the decision null and void. The trial court had dismissed the plaintiff’s claims for lack of standing. The plaintiff appealed.

The Board argued that, although A.R.S. section 38-431.07(A) entitles “[a]ny person affected by an

alleged violation” of the open meeting law to sue to require compliance, the plaintiff was not “affected” by the alleged violation. The Board also argued that the plaintiff was not affected by the violation because he did not and would have not have attended any meetings. As a result, the Board argued, the plaintiff did not have standing to sue.

The court reasoned, “Violations of open-meeting laws may facilitate improper expenditures [that would need to be ‘replenish[ed]’ by taxpayers] by hiding from the public eye the processes leading to them.” In other words, because taxpayers like the plaintiff fund the Board’s actions and expenditures through paying taxes, they are directly affected by an expenditure that might be improper due to an open meeting law violation.

The court also held that, alt-

hough he was not present, plaintiff “was affected because others who might have brought the impropriety to light could not observe.” Essentially, even though he had apparently not tried to attend the meeting, the plaintiff was still affected because someone else who might have tried to attend the meeting but was unable to due to the open meeting law violation could have brought the issues to light.

The court ultimately stated, “In sum, we conclude that a citizen taxpayer is a ‘person affected by’ expenditures of public funds arising from violations of open-meeting laws.” As a result, taxpayers have standing to sue over open meeting law violations involving the expenditure of public funds. It is not clear if non-taxpaying residents have standing or if taxpayers have standing when the alleged violation does not involve an expenditure.

Superior Court: Board of Regents Must Disclose NCAA Allegations Record

On March 2, the Maricopa County Superior Court ordered the Arizona Board of Regents to disclose to ESPN a “notice of allegations” issued by the NCAA to the University of Arizona regarding its basketball program. This came in the wake of a federal investigation and indictments. ESPN requested a copy of the notice under the Arizona public records law, but the University denied the request (and similar requests from other outlets). In response, ESPN filed a special action in superior court.

The Board made two main state interest arguments for withholding the record. In order to make a successful state interest argument, the government must demonstrate that specific harm to government interests is likely to occur upon disclosure. The Board asserted that disclosing the records would violate NCAA rules and possibly subject it to sanctions for a variety of reasons. The Board also asserted that disclosure would harm an ongoing investigation by an NCAA organization.

First, the court noted that there was no evidence the NCAA had ever penalized an entity for releasing public records or that it would in this case. Second, the court held that the Board “offered no evidence as to how the integrity of the investigation would be undermined by release . . .” As a result, the Superior Court ordered production of the record.

Legislation - 55th Legislature, 1st Session

- **HB 2804** — This bill would amend multiple sections of the open meeting law. Most prominently, it would amend A.R.S section 38-431.03 so that a public body could only obtain legal advice in executive session in regard to a discussion permitted by any of the other eight enumerated types of executive sessions. In other words, a public body can only engage in private discussions with an attorney on the narrow range of topics laid out in subsection (A) of the statute. This would have the practical effect of curtailing the attorney-client privilege between public bodies and their legal counsel. The bill narrowly passed out of the House 31-29 on March 4. It was transmitted to the Senate on March 5 and second-read by the Senate on March 9; however, it has not progressed further.
- **HB 2073** — This bill would amend various statutes to protect various information from public disclosure and publishing. Specifically, the bill would protect information about municipal court commissioners, members of the Commission on Appellate Court Appointments, hearing officers, and various former prosecuting attorneys from the federal to the municipal level. For example, the bill would amend A.R.S. sections 39-123 and 39-124 amending the definition of “eligible person” to include hearing officers, members of the Commission on Appellate Court Appointments., and, through modification of another definition, various former prosecuting attorneys. The bill was signed into law by the Governor on March 24.
- **HB 2152** — This bill would require law enforcement agencies, when disclosing body camera video, to redact, “ANY PORTION OF THE VIDEO RECORDING THAT SHOWS THE FACE OR AN IDENTIFIABLE BODY PART OF ANY PERSON WHO APPEARS IN THE VIDEO RECORDING IF THE PERSON IS NOT THE SUBJECT OF A POLICE INVESTIGATION OR ENFORCEMENT ACTION” when certain criteria apply, including when the person was in a private location or had an “expectation of privacy.” The bill narrowly passed the House on February 23 by a vote of 31-29, and it was transmitted to the Senate. The bill was second read by the Senate on February 25 and considered in caucus on March 16.
- **HB 2058** — This bill would continue Arizona State Library, Archives and Public Records. The agency was set to terminate in the summer but the Governor extended it through March via Executive Order. The bill passed the House on February 11 by a vote of 59-0 and passed the Senate 28-0 on April 1. It was passed as an emergency measure and transmitted to the Governor on April 1.

Arizona Ombudsman – Citizens’ Aide

Greetings,



In this issue, we discuss two public access court decisions and also take a look at public access legislation being considered during the current legislative session.

As always, our goal is to provide you with timely and informative information related to Arizona’s Public Record and Open Meeting Laws. If you have suggestions and ideas for an upcoming newsletter, or questions you want answered, please feel free to contact our office. In-person public records law and open meeting law training is suspended until further notice.

Sincerely,
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