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| District Court, Larimer County, State of Colorado 201 LaPorte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 498-6100 | FILED IN DISTRICT COURT LARIMER COUNTY, COLO. JUN 19 2009 JJB AT _____ M. ▲ COURT USE ONLY ▲ |
| MULTIMEDIA HOLDINGS CORPORATION, THE STAR-JOURNAL PUBLISHING COMPANY, and CENTER FOR INDEPENDENT MEDIA, Plaintiffs, v. BOARD OF GOVERNORS OF THE COLORADO STATE UNIVERSITY SYSTEM, Defendant. | Case Number: 09 CV 473 Courtroom: 3A |
| ORDER | |

After a hearing on May 21, 2009, the Court, finding Plaintiffs had established sufficient grounds to support a reasonable belief that the Defendant Board engaged in substantial discussions of non-exempt matters and adopted a proposed position during its May 5, 2009 executive session, entered an order granting Plaintiffs' "Application for Order of *In Camera* Review" of the session. Having completed said review, the Court makes the following findings and orders:

1. Pursuant to C.R.S. § 24-72-204(5.5)(b)(I), the Court conducted the *in camera* review, "to determine whether the state public body ... engaged in substantial discussion of any matters not enumerated in section 24-6-402(3) or (4) or adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of section 24-6-402(3)(a) or (4)." It is undisputed that the

Defendant Board is a “state public body” and not a “local public body.” It is therefore § 24-6-402(3) that will guide the Court's analysis.

2. Plaintiffs claim that the May 5, 2009 executive session violated the Colorado Open Meetings Law in the following ways:

- 1) The Defendant Board deliberated behind closed doors on the candidacy of Joseph Blake, a member of the Defendant Board, for the Chancellor's position. Plaintiffs argue such deliberation did not constitute the Defendant Board's receiving legal advice from its attorney on a specific legal question, and further argue that such deliberation could not properly be closed from public access because Mr. Blake was a member of the Defendant Board. This closed deliberation therefore violated C.R.S. § 24-6-402(3)(b)(II).
- 2) The Defendant Board interviewed Mr. Blake behind closed doors. Plaintiffs argue that this interview necessarily did not constitute the Defendant Board's receiving legal advice from its attorney on a specific legal question, nor could such an interview properly be closed from public access pursuant to the personnel exemption because Mr. Blake was a member of the Defendant Board. This closed interview therefore violated C.R.S. § 24-6-402(3)(b)(II).
- 3) The Defendant Board, behind closed doors, adopted the proposed position of selecting Mr. Blake as the sole finalist for the chancellor's position. Plaintiffs argue such adoption, even by informal decision-making or consensus, violated C.R.S. § 24-6-402(3)(a).

3. The Defendant Board admitted or confessed in part the relief requested by Plaintiffs by providing to Plaintiffs and releasing to the public a redacted version of the recording of the May 5, 2009 executive session on May 20, 2009. The Court's *in camera* review therefore pertains to what portions, if any, of the remaining record should be open to public inspection.

4. The Court finds that the Defendant Board did deliberate on the candidacy of Mr. Blake for the Chancellor's position during the May 5, 2009 executive session. The Court further finds that such deliberation does not constitute the Defendant Board's receiving legal advice from its attorney on a specific legal question. C.R.S. § 24-6-402(3)(b)(I) allows state public bodies to consider the appointment or employment of a public official in executive session if the applicant, official, or employee so requests. However, C.R.S. § 24-6-402(3)(b)(II) states that the provisions of subparagraph (b)(I) "shall not apply to discussions concerning any member of the state public body." Since Mr. Blake was a member of the Defendant Board at the time of the May 5, 2009 executive session, the Court finds that the Defendant Board's deliberation of Mr. Blake's candidacy could not properly be closed to the public, and that any such deliberation in executive session violated C.R.S. § 24-6-402(3)(b)(II).

5. The Court's review of the recording of the May 5, 2009 executive session reveals that the non-exempt deliberations are contained at the following points of the recording:

- 1) 42:44 – 1:15:42
- 2) 3:01:50 – 3:26:01

These portions of the recording also contain several references to and discussion of another candidate for the Chancellor position. Discussion solely related to this candidate, undertaken in executive session does not violate the statute. However, the Court finds that the discussion of the second candidate is so inextricably intertwined with discussion of Mr. Blake that it must be construed to be a discussion of Mr. Blake, and is therefore not exempt pursuant to C.R.S. § 24-6-402(3)(b)(II). Defendant shall therefore make these portions of the recording available to Plaintiffs, as well as to the general public.

6. The Court also finds that the Defendant Board did interview Mr. Blake for the vacant Chancellor's position during the May 5, 2009 executive session. The Court further finds that this interview does not constitute the Defendant Board's receiving legal advice from its attorney on a specific legal question. For reasons identical to those set forth above, the Court finds that the Defendant Board's interview of Mr. Blake could not be closed to the public, and that conducting said interview in executive session violated C.R.S. § 24-6-402(3)(b)(II).

7. The Court's review of the recording of the May 5, 2009 executive session reveals that the interview occurred at the following point of the recording: 2:23:16 – 2:59:31. Defendant shall make this portion of the recording available to Plaintiffs, as well as to the general public.

8. Finally, the Court finds that the Defendant Board did adopt the proposed position of selecting Mr. Blake as the sole finalist for the Chancellor's position during the May 5, 2009 executive session. C.R.S. § 24-6-402(3)(a) provides, in part, "no adoption of any proposed policy, position, resolution, rule, regulation, or formal action, except the

review, approval, and amendment of the minutes of an executive session recorded pursuant to subparagraph (l) of paragraph (d.5) of subsection (2) of this section, shall occur at any executive session that is not open to the public.”

9. The discussions occurring at the following portions of the recording make it abundantly clear that the Defendant Board adopted the proposed position of selecting Mr. Blake as the sole finalist for the Chancellor’s position during the May 5, 2009 executive session:

- 1) 3:43:10 – 3:43:25
- 2) 3:57:21 – 3:58:30

The public vote, without any further discussion or deliberation, was nothing more than a “rubber stamp” of the decision already made in executive session. The Defendant Board shall therefore make these portions of the recording available to Plaintiffs, as well as to the general public.

10. Based on the above, the Defendant Board shall compile and deliver to Plaintiffs and the Court, within seven (7) days of this order, a compact disc or other electronic medium containing the following portions of the recording of the May 5, 2009 executive session in the order listed:

- 1) 42:44 – 1:15:42
- 2) 2:23:16 – 2:59:31
- 3) 3:01:50 – 3:26:01
- 4) 3:43:10 – 3:43:25
- 5) 3:57:21 – 3:58:30

Within the same period of time, the Defendant Board shall also make such compact disc or other medium available for public inspection, pursuant to C.R.S. 24-72-204(5.5)(b)(II).

11. This order addresses only those matters within the scope of an *in camera* review conducted "to determine whether the state public body ... engaged in substantial discussion of any matters not enumerated in section 24-6-402(3) or (4) or adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of section 24-6-402(3)(a) or (4)." There are broader issues raised in the complaint, which are not the subject of this order and which will be dealt with in due course in the underlying action.

12. The above ruling necessarily means that the Defendant Board's "Motion for Stay of *In Camera* Review" is denied. Further, the Court orders that Plaintiffs' "Motion for Stay of Briefing on Summary Judgment Motion Pending Resolution of *In Camera* Review" is granted.

Dated this 19th day of June, 2009.

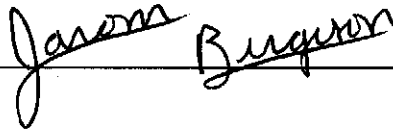
BY THE COURT:


Stephen J. Schapanski
District Court Judge

CERTIFICATE OF MAILING

This is to certify that on the 19th day of June, 2009 a true and correct copy of the above and foregoing Order was delivered to the attorney of record and parties appearing pro se in the following manner:

E-filed via LexisNexis File and Serve.

A handwritten signature in black ink, reading "Jason Burgeon", is written over a solid horizontal line. The signature is written in a cursive style.

cc: Christopher Beall, Esq.
Attorney for Plaintiffs

Fred Kuhlwilm, Esq.
Attorney for Defendant