COMMONWEALTH of VIRGINIA

MATTHEW J. QUATRARA
JUDGE

ALBEMARLE GENERAL DISTRICT COURT
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February 9, 2021

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Re: Schilling v. JAUNT Inc., Case No. GV21000007-00

Dear Mssrs. Hardin, Abel, and Bumpus,

I write to provide you with my written opinion in the case of Schilling v. JAUNT Inc., Case No. GV21000007-00, a lawsuit brought under the Virginia Freedom of Information Act ("VFOIA") in the General District Court for the City of Charlottesville. Having fully considered all the pleadings in the case, including the complaint, the amended complaint, the demurrer, the demurrer to the amended complaint, and the response in opposition to the demurrer, as well the extensive oral arguments on both January 11, 2021, and February 3, 2021, the Court finds the following:

The central question at issue is whether Plaintiff has pled sufficient facts to establish that Defendant is a "public body" as defined by Va. Code Section 2.2-3701 and subsequent statutory interpretation for VFOIA to apply. If the Court finds sufficient facts have been pled to establish that Defendant is a "public body," it should overrule the demurrer and allow the case to proceed. If not, then the Court should sustain the demurrer and dismiss the case.

The Court first begins by looking at the statute. Under Section 2.2-3701, "public body" means, in relevant part, "any...authority, board, bureau...or agency **of** the Commonwealth...and

other organizations, corporations or agencies **in** the Commonwealth supported wholly or principally by public funds. It shall include...any committee, subcommittee, or other entity however designated, **of** the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee or entity because it has private sector or citizen members." (emphasis added).

The first issue the Court must decide is whether Defendant is "wholly or principally" supported by public funds. Plaintiff alleges that Defendant receives roughly $12 million in funds annually: Roughly $6 million from state and local government, roughly $5 million from the federal government, and roughly $1 million from user fees. While in basic agreement on these approximate numbers, however, the parties disagree on the issue of whether federal monies should count as "public funds" for determining whether VFOIA applies.

Defendant argues, without any authority, that only Virginia state money should count, and that federal funds must be excluded. Plaintiff counters that, although aged in terms of its decisions, federal funds do count as public money for purposes of Virginia criminal statutes dealing with embezzlement, and that this authority is sufficient to have federal funds be included as "public" for VFOIA purposes.

The Court finds federal funds are "public funds" for VFOIA purposes. The Court cannot, on its own and without statutory authority or a binding opinion from a higher court, read into the statute a requirement that the term "public funds" includes only Virginia state funds and excludes federal funds, and must instead apply a common sense meaning to the term. Becker v. Commonwealth, 174 Va. 454, 459 (1939) (holding that the term "public money, in the absence of a statute defining it, must be construed to its usual meaning and common acceptation"). Accordingly, the Court finds Plaintiff has sufficiently alleged that $11 million of Defendant's $12 million annual funds are "public," thus making Defendant "wholly or principally" supported by public funds.

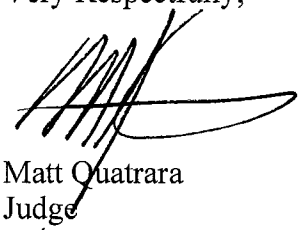
The second issue Defendant raises is the need for an entity to be created to perform "delegated functions of the public body." However, in the Court's mind, the Court does not need to reach this issue based on the plain language of the statute. Once the Court has determined that Plaintiff has pled that the organization, corporation, or agency is "wholly or principally supported by public funds" (and it has), so long as the organization, corporation, or agency is **in** the Commonwealth, it is subject to VFOIA. This is because the delegation requirement applies only to an organization, entity, or agency **of** the Commonwealth, which, as a corporation, Defendant is not.

Defendant relies on the Virginia Supreme Court case of Transparent GMU v. George Mason University, et al, 298 Va. 222 (2019) for its position that this second prong is required. That case, however, is distinguishable from this one because the Court there found that the entity was not supported wholly or principally by public funds, which, unlike the present case, required the Court to advance to the second portion of the statute. Upon further review and reflection, the Court finds no such advance is necessary here.

Accordingly, Defendant's Demurrer is overruled, and the case may proceed. The Court will take up the issue of Defendant's Plea in Bar at a time mutually convenient to the parties to

be set on February 10, 2021 at 4 pm via WebEx. The Court is very appreciative of the attorneys' exceptional written and oral advocacy for their respective clients and looks forward to working with counsel as the case progresses.

Very Respectfully,



Matt Quatrara
Judge
16th Judicial District