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STEPHANIE S. MADDOX
RAHBY C. KRANTZ
JUDGES

COMMONWEALTH of VIRGINIA

TWENTY-FOURTH DISTRICT

City of Lynchburg General District Court

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July 9, 2020

David W. Rowan, Esq.

Lynwood W. Lewis, Jr., Esq.

RE: Matthew Hart v Town of Onley

Dear Mr. Lewis and Mr. Rowan,

Plaintiff raised three issues in his complaint that the closed meeting of the Onley town council on May 19, 2020 violated the Freedom of Information Act (FOIA). First, that the notice of the special meeting of the town council did not comply with Va. Code Section 15.2-1418; Second, that the subject of the closed meeting did not fall within a permitted exception to the open meeting requirement under Va. Code Section 2.2-3711 A; Third, the motion to go into closed session did not comply with FOIA requirements.

With respect to the first issue, the testimony indicated that the Town Manager sent an email notice of the special meeting to Mr. Hart. Code Section 15.2-1418 requires that the notice be in writing delivered in person to the recipient or to his residence or place of business. Email notices are permitted only if requested by the recipient. Mr. Hart testified he had not requested to be notified by email. Mr. Hart further testified he had received the email notice of the special meeting and had filed an objection to the meeting. The Charter of the Town of Onley does not have the same requirements for notice of special meetings and requires only "reasonable notice." Assuming that the email notice of the special meeting did not comply with Code Section 15.2-1418, I find nothing in the Code of Virginia that invalidates the actions taken at a special meeting where the notice did not meet the requirements of Code Section 15.2-1418. In any case, the failure of the notice to meet the requirements of Code Section 15.2-1418 does not constitute a FOIA violation.

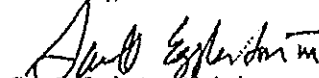
With respect to the second issue, Code Section 2.2-3711 permits public bodies to go into closed session for the purpose of discussion of the performance and disciplining of specific public officials. Plaintiff cited FOIA Advisory Opinion AO-17-03 which held that a school board could not go into closed session for the purpose of disciplining a school board member because it had no authority to discipline

its members. That opinion went on to state that if the public body has the formal power to discipline a fellow public officer, then a discussion of the performance of that officer and what disciplinary action to take could take place in closed session. Va. Code Section 15.2-1400 provides that members of public bodies can be fined or punished for "disorderly conduct." This code section provides the formal authority for the town council to discipline its members. Consequently, the town council's decision to go into closed session to discuss Mayor Hart's performance and any disciplining of the mayor was an appropriate topic for a closed meeting.

With respect to the third issue, the motion to go into closed session was as follows: "Motion: To go into Closed Session (6:32 pm) in accordance with Section 2.2-3711(A) of the Code of Virginia of 1950, as amended for the purpose of Paragraph 1: Discussion or Consideration of Personnel Matters pertaining to the Elected Governing Body of the Town of Onley, specifically related to parliamentary procedure, meeting decorum and professionalism." FOIA Advisory Opinion AO-02-16 sets forth the standard for determining if a motion to go into closed session complies with FOIA. The motion must identify the subject matter of the meeting, state the purpose of the meeting and make specific reference to the applicable exemption from the open meeting requirements. The opinion goes on to note that "when identifying the subject of a closed meeting, the subject need not be so specific as to defeat the reason for going into closed session, but should at least provide the public with general information as to the object of the discussion." In the present case, the motion referenced Code Section 2.2-3711(A) as the applicable statute which provided the exemption from the open meeting requirement. The motion referenced "discussion or consideration of personnel matters pertaining to the Elected Governing Body of the Town of Onley" as the purpose of the meeting. The motion then referenced "specifically related to parliamentary procedure, meeting decorum and professionalism" as the subject of the meeting. The language that the discussion is "pertaining to the Elected Governing Body of the Town of Onley" indicates that the discussion is going to be about the actions of the members of the town council. The language "specifically related to parliamentary procedure, meeting decorum and professionalism" indicates that the discussion is going to be about the behavior of the members of the town council. A discussion about parliamentary procedure standing alone would not be a proper subject for a closed meeting, but when considered in the context of the demeanor and professionalism of members of council it indicates that it is the adherence to parliamentary procedure which is going to be discussed. These topics fall under the category of "performance" and "disciplining" of specific public officers which is permitted under Code Section 2.2-3711. For these reasons I find that the motion to go into closed session complied with FOIA requirements.

For the reasons set forth above I find that the Onley Town Council complied with FOIA requirements when it went into closed session on May 16, 2020 and that petitioner is not entitled to an injunction. I request that Mr. Lewis prepare an order reflecting my decision and submit it to Mr. Rowan for endorsement. The order should then be submitted to Ms. Chisum who can contact me and I can let her know where to send it so that I can enter the order.

Yours Truly,


Sam D. Eggleston, III, Judge