

SUPREME COURT OF VIRGINIA

Beck v. Shelton, 267 Va. 482

593 S.E.2d 195 (2004) · No. Record No. 030723 · Decided March 5, 2004

SUMMARY

The Supreme Court of Virginia addressed whether Virginia's Freedom of Information Act applies to members-elect, whether certain e-mail exchanges among public officials constitute meetings, and whether a citizen-organized gathering attended by three city council members was a meeting. The court held that members-elect are not members under the Act, the e-mail exchanges at issue were not meetings because they lacked simultaneity, and the Charlotte Street gathering was not a meeting. The judgment was affirmed in part, reversed in part, and final judgment was entered for the defendants.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Justice Lemons; All the Justices
JURISDICTION	Virginia
DECIDED	March 5, 2004
DOCKET	Record No. 030723
DISPOSITION	other
PROCEDURAL POSTURE	Appeal and cross-error from a trial court judgment in an 18-count petition for writ of mandamus and injunction alleging violations of the Virginia Freedom of Information Act.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo; factual findings concerning whether the Charlotte Street gathering was an informational forum and whether public business was discussed are reviewed for plain error or lack of evidentiary support. Summary judgment is proper where the material facts are undisputed and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Virginia.
PARTIES	William M. Beck, W. Scott Howson III, Thomas P. Fortune, William C. Withers Jr., Matthew J. Kelly v. Gordon Shelton, Anthony Jenkins, Patrick J. Timpone

TOPICS

statutory interpretation

plain meaning rule

municipal law

appellate procedure

preservation of error

PRACTICE AREAS

Freedom of Information Act

municipal law

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether members-elect are members of a public body for purposes of the Virginia Freedom of Information Act's open-meeting provisions.
2. Whether the exchange of non-simultaneous e-mails among three or more members of a public body constitutes a meeting under the Virginia Freedom of Information Act.
3. Whether the Charlotte Street citizen gathering attended by three city council members constituted a meeting under the Virginia Freedom of Information Act.
4. Whether the trial court properly resolved the e-mail-based historic-preservation claim.

HOLDINGS

1. Members-elect are not members under Code § 2.2-3701, and FOIA's open-meeting provisions do not apply when the required participant threshold is reached only by including members-elect.
2. Under the facts presented, e-mail exchanges functioning as non-simultaneous written correspondence did not constitute meetings under FOIA.
3. The Charlotte Street gathering was not a meeting under FOIA because it was a citizen-organized informational forum, not a gathering called or attended for the purpose of discussing or transacting public business.

KEY QUOTATIONS

"We will not rewrite Code § 2.2-3701 to change the word "members" to the phrase "members or members-elect." (593 S.E.2d 197)

"The term inherently entails the quality of simultaneity." (593 S.E.2d 199)

"The key difference between permitted use of electronic communication, such as email, outside the notice and open meeting requirements of FOIA, and those that constitute a "meeting" under FOIA, is the feature of simultaneity inherent in the term "assemblage." (593 S.E.2d 199)

FACTUAL BACKGROUND

Three Fredericksburg City Council members-elect communicated and met with two sitting council members before the members-elect took office. After July 1, 2002, more than three council members exchanged e-mails about public business, but the messages were separated by intervals ranging from more than four hours to more than two days and functioned like traditional written correspondence. Separately, three council members attended a citizen-organized gathering concerning traffic safety at the intersection of Charlotte and Weedon

Streets; the trial court found that the gathering was informational and that the council members did not discuss public business with one another.

PROCEDURAL HISTORY

Shelton filed an 18-count petition against the mayor, vice-mayor, and councilmen of Fredericksburg. The trial court sustained demurrers or ruled for the defendants on fourteen counts, Shelton voluntarily dismissed three counts, and the court ruled on the remaining counts by demurrer, trial, or summary judgment. The trial court found certain open-meeting violations but determined they were not knowing or willful, imposed no penalty, denied attorney's fees, and entered a judgment that the parties appealed or cross-assigned as error.

DISPOSITION

other

CASES CITED

- Lee County v. Town of St. Charles, 264 Va. 344, 348, 568 S.E.2d 680, 682 (2002)
- Twietmeyer v. City of Hampton, 255 Va. 387, 393, 497 S.E.2d 858, 861 (1998)
- Browning-Ferris, Inc. v. Commonwealth, 225 Va. 157, 161-62, 300 S.E.2d 603, 605-06 (1983)

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