

SUPREME COURT OF OHIO

State ex rel. Musial v. City of North Olmsted

106 Ohio St. 3d 459 (Ohio 2005) · Decided November 2, 2005

SUMMARY

The Ohio Supreme Court affirmed the denial of most of a mandamus petition seeking access to police and ethics commission investigative records concerning former North Olmsted mayor Norman T. Musial. The court held that the records were confidential law-enforcement investigatory records and that the uncharged-suspect exemption under Ohio’s Public Records Act applied, despite the conclusion of the investigation and referral to the city ethics commission. The court also rejected Musial’s arguments under the Open Meetings Act and city charter as not properly raised and upheld the denial of attorney fees.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per curiam; Moyer, C.J.; Resnick, J.; Lundberg Stratton, J.; O'Connor, J.; O'Donnell, J.; Lanzinger, J.; Pfeifer, J.
JURISDICTION	Ohio
DECIDED	November 2, 2005
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal as of right from the Cuyahoga County Court of Appeals' partial denial of a petition for a writ of mandamus seeking access to police and municipal ethics commission investigative records.
STANDARD OF REVIEW	The Supreme Court reviewed the legal and statutory issues presented on appeal and whether the court of appeals correctly denied the mandamus relief sought. It also reviewed the denial of attorney fees for abuse of discretion.
PRECEDENTIAL VALUE	Published state supreme court opinion; precedential
PARTIES	Norman T. Musial v. City of North Olmsted, Clerk of City Council, Chief of Police, Director of Public Safety

TOPICS

- administrative law
- municipal law
- statutory interpretation
- remedies
- appellate procedure

PRACTICE AREAS

Ohio public records law

municipal law

administrative law

mandamus

statutory interpretation

QUESTIONS PRESENTED

1. Whether records identifying Musial and his administrative assistant remained exempt as confidential law-enforcement investigatory records under R.C. 149.43(A)(1)(h) and (A)(2)(a) even though neither had been charged or arrested and the grand jury returned no indictment.
2. Whether forwarding the police investigative records to the municipal ethics commission, or the alleged applicability of the Open Meetings Act and North Olmsted Charter, required disclosure of the records or waived the exemption.
3. Whether the court of appeals properly denied Musial's request for attorney fees.

HOLDINGS

1. Records generated by a specific police investigation into alleged misconduct by Musial and his administrative assistant constituted confidential law-enforcement records under R.C. 149.43.
2. The uncharged-suspect exemption under R.C. 149.43(A)(2)(a) applied because the records could disclose the identities of suspects who had not been charged; the exemption applied even though the grand jury returned a no bill and neither person had been charged or arrested.
3. The Open Meetings Act and North Olmsted Charter arguments were not properly before the court because Musial did not raise them in his petition or amended petition and appellees did not consent to their litigation. In any event, the charter permitted an executive session to investigate charges or complaints against a public official.
4. Neither the municipal ethics commission's administrative review nor the police department's forwarding of records to that commission ended, waived, or otherwise affected the uncharged-suspect exemption.
5. Musial was not entitled to attorney fees because his mandamus claim was largely without merit, and the court of appeals did not abuse its discretion in denying fees.

KEY QUOTATIONS

“A “charge” is a “formal accusation of an offense as a preliminary step to prosecution.”” (462-463)

“Musial was a suspect investigated by the police department, but he was never charged with a criminal offense for the Springvale matter.” (463)

“Therefore, based on the plain language of R.C. 149.43(A)(2)(a) as well as precedent, the court of appeals correctly held that the uncharged-suspect exemption applied to the majority of the withheld records.” (464)

FACTUAL BACKGROUND

North Olmsted owned and rented the Springvale Ballroom Facility for private functions. Police investigated whether Musial, then the city mayor, his law firm, and a foundation associated with him received favorable rental and catering rates for events at the facility. A grand jury declined to indict Musial, and the North Olmsted

Ethics Commission found no probable cause to believe that he had violated the city ethics code. Police records were released in part, but records deemed confidential law-enforcement investigatory records were withheld.

PROCEDURAL HISTORY

Musial requested records concerning police and ethics investigations into favorable rental and catering rates allegedly provided to his law firm and a foundation associated with him. The Court of Appeals for Cuyahoga County denied the writ as to most records because they were confidential law-enforcement investigatory records, ordered release of four records after additional redaction, and denied attorney fees. Musial appealed, limiting his arguments to whether all requested records had to be disclosed under the Public Records Act, the Open Meetings Act, and the North Olmsted Charter.

DISPOSITION

affirmed

CASES CITED

- State ex rel. Beacon Journal Publishing Co. v. Maurer, 91 Ohio St. 3d 54, 56, 741 N.E.2d 511 (2001)
- State ex rel. Polovischak v. Mayfield, 50 Ohio St. 3d 51, 52-53, 552 N.E.2d 635 (1990)
- State ex rel. Yant v. Conrad, 74 Ohio St. 3d 681, 660 N.E.2d 1211 (1996)
- State ex rel. United States Steel Corp. v. Zaleski, 98 Ohio St. 3d 395, 2003-Ohio-1630, 786 N.E.2d 39, ¶ 12
- State ex rel. Cincinnati Bell Tel. Co. v. Pub. Util. Comm., 105 Ohio St. 3d 177, 2005-Ohio-1150, 824 N.E.2d 68, ¶ 27
- State ex rel. Lee v. Karnes, 103 Ohio St. 3d 559, 2004-Ohio-5718, 817 N.E.2d 76, ¶ 23
- State ex rel. WLWT-TV5 v. Leis, 77 Ohio St. 3d 357, 360-361, 673 N.E.2d 1365 (1997)
- State ex rel. Moreland v. Dayton, 67 Ohio St. 3d 129, 130, 616 N.E.2d 234 (1993)
- State ex rel. Ohio Patrolmen's Benevolent Assn. v. Mentor, 89 Ohio St. 3d 440, 447, 732 N.E.2d 969 (2000)
- State ex rel. Master v. Cleveland, 75 Ohio St. 3d 23, 29-30, 661 N.E.2d 180 (1996)
- State ex rel. Steckman v. Jackson, 70 Ohio St. 3d 420, 426, 639 N.E.2d 83 (1994)
- State ex rel. Van Dyke v. Pub. Emp. Retirement Bd., 99 Ohio St. 3d 430, 2003-Ohio-4123, 793 N.E.2d 438, ¶ 42
- State ex rel. Taxpayers Coalition v. Lakewood, 86 Ohio St. 3d 385, 391, 715 N.E.2d 179 (1999)
- State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland, 57 Ohio St. 3d 77, 80, 566 N.E.2d 146 (1991)
- State ex rel. McGee v. Ohio State Bd. of Psychology, 49 Ohio St. 3d 59, 60, 550 N.E.2d 945 (1990)
- State ex rel. Nix v. Cleveland, 83 Ohio St. 3d 379, 385, 700 N.E.2d 12 (1998)
- State ex rel. Cranford v. Cleveland, 103 Ohio St. 3d 196, 2004-Ohio-4884, 814 N.E.2d 1218, ¶ 24