

SUPREME COURT OF VIRGINIA

White Dog Publishing, Inc. v. Culpeper County Board of Supervisors

634 S.E.2d 334 (Va. 2006) · No. Record No. 052333 · Decided September 15, 2006

SUMMARY

The Supreme Court of Virginia held that the Culpeper County Board of Supervisors violated the Virginia Freedom of Information Act by conducting a closed meeting that did not fall within the statutory exemption for discussions concerning the award or formation of a public contract. The court also held that the publishers substantially prevailed and were entitled to attorney's fees and reasonable costs, reversing and remanding the circuit court's judgment.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Cynthia D. Kinser; Hassell, C.J.; Keenan, J.; Koontz, J.; Kinser, J.; Lemons, J.; Agee, J.; Russell, S.J.
JURISDICTION	Virginia
DECIDED	September 15, 2006
DOCKET	Record No. 052333
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The publishers appealed the circuit court's judgment rejecting their challenge to the Board's closed session under the Virginia Freedom of Information Act and denying attorney's fees and costs.
PRECEDENTIAL VALUE	Published Virginia Supreme Court opinion; precedential.
PARTIES	White Dog Publishing, Inc., Media General Operations, Inc., The Free Lance-Star Publishing Company v. Culpeper County Board of Supervisors

TOPICS

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

PRACTICE AREAS

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

QUESTIONS PRESENTED

1. Whether the Board's October 5, 2004 closed session fell within the public-contract exemption in Code § 2.2-3711(A)(30) to FOIA's open-meeting requirement.
2. Whether the publishers were entitled to attorney's fees and reasonable costs under Code § 2.2-3713(D) after substantially prevailing on their FOIA claims.

HOLDINGS

1. The public-contract exemption permits a closed meeting to discuss the award, formation, or modification of a public contract when open discussion would adversely affect the public body's bargaining position or negotiating strategy; it does not permit a closed meeting to discuss the application or enforcement of the terms or scope of an already awarded contract. Because the Board was discussing its strategy regarding the School Board rather than negotiating with the SHW vendor, the closed session was not exempt.
2. Because the publishers substantially prevailed on the merits of their FOIA claims, they were entitled to an award of attorney's fees and reasonable costs unless special circumstances made the award unjust. The asserted circumstances did not justify denying the award.

KEY QUOTATIONS

“The unambiguous language in Code § 2.2-3711(A)(30), viewed in its entirety, demonstrates that the purpose of the exemption is to protect a public body's bargaining position or negotiating strategy vis-à-vis a vendor during the procurement process.” (at 339)

“Contrary to the Board's position, the exemption does not allow a public body to close a meeting in order to discuss the application or enforcement of the scope or terms of a previously awarded public contract.” (at 340)

“We will therefore remand this case for a determination of an award of attorney's fees and reasonable costs to the publishers in accordance with Code § 2.2-3713(D).” (at 341)

FACTUAL BACKGROUND

The Culpeper County Board of Supervisors and School Board were publicly debating the construction and configuration of a new high school. The Board had become a party to an architectural contract with SHW Group and held a closed session to discuss options concerning the scope of SHW's work and the Board's strategy in dealing with the School Board. Although the Board invoked the public-contract exemption in Virginia's Freedom of Information Act, the evidence showed that no negotiations with SHW occurred during the closed session and that the discussion concerned a policy dispute and strategy involving another public body.

PROCEDURAL HISTORY

White Dog filed an amended petition for a writ of mandamus in the General District Court of Culpeper County challenging the Board's October 5, 2004 closed meeting. The general district court ruled for the Board, and White Dog appealed to the circuit court. During the circuit-court proceeding, Media General Operations, Inc. and The Free Lance-Star Publishing Company intervened. After a de novo evidentiary hearing, the circuit court

found that the Board's closed-session motion violated FOIA but held that the closed session itself was authorized and denied attorney's fees and costs. The Supreme Court of Virginia reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Issue a writ of mandamus and determine an award of attorney's fees and reasonable costs to the publishers in accordance with Code § 2.2-3713(D).

CASES CITED

- Tull v. Brown, 255 Va. 177, 182, 494 S.E.2d 855, 857 (1998)
- City of Danville v. Laird, 223 Va. 271, 276, 288 S.E.2d 429, 431 (1982)
- Cummings v. Fulghum, 261 Va. 73, 77, 540 S.E.2d 494, 496 (2001)
- Ragan v. Woodcroft Village Apartments, 255 Va. 322, 325, 497 S.E.2d 740, 742 (1998)
- Norfolk Southern Railway Co. v. Lassiter, 193 Va. 360, 364, 68 S.E.2d 641, 643 (1952)
- Virginia Electric & Power Co. v. Board of County Supervisors of Prince William County, 226 Va. 382, 388, 309 S.E.2d 308, 311 (1983)
- Nageotte v. Board of Supervisors of King George County, 223 Va. 259, 266, 288 S.E.2d 423, 426 (1982)