

## *The Open Meetings Act Requires Public Bodies to Specify their Decisions*

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In a recent decision under the Open Meetings Act (“OMA”), the Michigan Court of Appeals held that a public body’s minutes did not adequately reflect the decision made at a meeting, thus violating the OMA

In *Citizens for Public Accountability v. Lawrence*, Case No. 292311 (May 26, 2011), the township was in litigation with a developer. They reached a settlement, but before the township approved it, several public meetings were held for the purpose of considering it. The township held a special meeting on July 24, 2008 during which it approved the settlement agreement by adopting a resolution. Subsequently, at another meeting, they approved the minutes of the July 24 meeting and also approved the resolution.

No citizens were present at either meeting, despite the controversial nature of the issues. Plaintiffs sued, seeking to invalidate the settlement agreement on the grounds that defendant violated that OMA by failing to give adequate notice and failing to properly record the events of the July 24 meeting.

The July 24 minutes indicate that a decision was made, as follows: “[T]he township board hereby authorizes the Township Supervisor and Township Clerk to execute any appropriate documents, if presented as outlined, and recommended by the township attorney[.]” However, defendant’s clerk testified that the settlement agreement was authorized at that meeting – something not reflected in the minutes. The Court of Appeals held that this violated the OMA, because:

“[a]ll that can be inferred from a reading of the minutes as a whole is that the supervisor and clerk were authorized to execute those documents presented and recommended by the attorney pertaining to litigation and settlement issues, if any were presented at all. What is not stated in the minutes is defendant’s actual decision to settle the REIS litigation. This ultimate outcome is not even implied because nothing in the minutes indicates what documents the attorney had presented. And, although the documents presumably related to the “litigation and settlement issues,” there is no indication whether such documents included mere recommendations or full or partial proposals. Accordingly, we conclude that defendant violated [OMA] because the minutes do not reflect the actual decision taken at the July 24 meeting, i.e., to settle the pending REIS litigation.

As to its claim of insufficient notice, Plaintiffs argued that OMA requires it be *publicly accessible* for 18 hours prior to the meeting. As the dissent pointed out,

In my estimation, “public notice” means exactly that—notice made available to the public, not dark, deserted building corridors. The majority construes the OMA’s notice provision in a manner that would permit a public body to notify the public of a special meeting commencing at 9:00 a.m. on a Monday by posting a notice at closing time on a Friday afternoon. Indisputably, this “notice” would frustrate the legislative purpose expressed in the statute.

While acknowledging this “conundrum”, the court held that no such requirement could be read into the plain language of the statute. It thus rejected the claim that the notice must be posted at least 18 business hours before the meeting or posted in a place accessible to the public for at least 18 hours before the meeting.

***If you have questions about these issues or any other FOIA/OMA issues, please contact a member of the Butzel Media Team:***

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