

INTRODUCTION

1. This complaint alleges violations the Colorado Open Meetings Law (“OML”), C.R.S. §24-6-401, et seq. On April 8, 2015, the BOCC adopted two resolutions authorizing Elbert County (“the County”) to indemnify County Commissioners Rowland and Larry Ross (“Ross”) for personal liability arising from several distinct administrative and judicial actions against Rowland in the Office of Administrative Courts and Elbert County District Court and against Rowland, Ross, and former Commissioner Kurt Schlegel (“Schlegel”) in the United States District Court for the District of Colorado. Brown alleges that the resolutions and the discussion leading up to their passage violated the OML in the following respects: (a) the meeting agenda was deceptive and failed to provide advance notice to the public that the BOCC would be taking up the issue of indemnification and (b) the BOCC discussed the issue in an improperly convened executive session. As a result of the OML violations, the resolutions are void.

2. The resolutions described in paragraph 1 above are also void because they were passed by the vote of a single commissioner, Kelly Dore (“Dore”), the other two commissioners having recused themselves. Resolutions passed by less than a quorum of the three member BOCC are void and of no effect.

3. Brown seeks injunctive and declaratory relief as remedies for the unlawful conduct described herein.

JURISDICTION AND VENUE

3. This court has jurisdiction over the parties.

4. This court has jurisdiction over the subject matter of this litigation pursuant to C.R.S. §24-6-402(9)(b), C.R.S. §§13-51-101 to -115 (Uniform Declaratory Judgments Law) and Rule 57 of the Colorado Rules of Civil Procedure.

5. Venue is proper in Elbert County pursuant to Rules 98(b)(2) and (c)(1) of the Colorado Rules of Civil Procedure.

PARTIES

6. Plaintiff Richard Brown is a citizen of Colorado and a resident and taxpayer of Elbert County.

7. Defendant Board of County Commissioners of the County of Elbert is the governing body of Elbert County, Colorado.

8. Defendant Robert Rowland is named individually and in his capacity as the chair of the BOCC with responsibility for signing warrants or orders drawn on the county treasury pursuant to C.R.S. §30-25-110(1).

GENERAL ALLEGATIONS

A. The Liability Claims Described in the Indemnification Resolutions: The Duvall Litigation.

9. On November 8, 2013, Elbert County resident Jill Duvall (“Duvall”) filed a complaint with the office of the Colorado Secretary of State alleging that the BOCC and Rowland individually had violated the Colorado Fair Campaign Practices Act (“FCPA”) by expending public funds to urge voter support of a local ballot issue. The complaint was referred to the Office of Administrative Courts for a hearing.

10. On December 24, 2013, after a one day evidentiary hearing, Administrative Law Judge Robert Spencer issued a written opinion in the case entitled In Matter of the Complaint Filed by Jill Duvall Regarding Alleged Campaign and Political Finance Violations by the Elbert County Board of County Commissioners and Robert Rowland, a Commissioner Thereof, Office of Administrative Courts Case No. OS 2013-0012 (“Duvall I”).

11. Judge Spencer held that the BOCC had violated the FCPA “by spending public money to urge voters to support a pending ballot issue.” Judge Spencer further held that that “it would not be appropriate to impose a civil penalty against the BOCC because such penalty would likely be satisfied from county funds, and thus would only penalize the Elbert County taxpayers.” (emphasis in original). Based on these holdings, Judge Spencer concluded, “The ALJ orders Commissioner Rowland, as an individual responsible for the improper expenditure, to reimburse the county general fund \$1000 within 30 days of this order.”

12. On January, 16, 2014, the BOCC held a special meeting. The sole item of new business on the agenda was the question of whether to appeal Judge Spencer’s decision to the Colorado Court of Appeals. Rowland seconded a motion to pursue the appeal and, along with former Commissioner Kurt Schlegel, voted in favor of the motion. The third commissioner, Ross, voted against the motion.

13. The only substantive issue before the Court of Appeals was the \$1000 personal penalty imposed on Rowland by Judge Spencer.

14. On March 5, 2015, the Court of Appeals affirmed Judge Spencer’s order directing Rowland to reimburse the county’s general fund \$1000.

15. On or about August 24, 2014, counsel for Duvall filed an action in this court seeking to enforce Judge Spencer's order against Rowland. The action, entitled Duvall v. Rowland, et al., District Court Case No. 14 CV 30078 ("Duvall II"), was stayed pending the Court of Appeals decision in Duvall I. The stay was dissolved after that decision issued.

16. As of the date of this Complaint, in Duvall II, based upon her status as the prevailing party in Duvall I, Jill Duvall is seeking an award of costs and attorney's fees in excess of \$16,000 against Rowland and the BOCC.

B. Liability Claims Described in the Indemnification Resolutions: The Radeker Litigation.

17. On or about August 22, 2014, Cherie Radeker filed a complaint in the United States District Court for the District of Colorado in the case entitled Radeker v. Elbert County Board of County Commissioners, et al. Civil Action No. 14 - CV-1238 ("Radeker"). In addition to the BOCC, the complaint names Rowland, Ross, and Schlegel as defendants officially and individually.

18. The Radeker complaint alleges that the Plaintiff was unlawfully terminated after being granted leave under the federal Family and Medical Leave Act. Based upon five causes of action, it seeks compensatory and punitive damages, prejudgment interest, costs and attorneys' fees.

19. Brown alleges on the basis of information and belief that the Radeker case is still pending

C. The BOCC Meeting Leading to the Indemnification Resolutions.

20. On April 7, 2015, the County posted an agenda just over 24 hours in advance of the April 8 Meeting. (Exhibit 1). The last two items on the agenda prior to adjournment are described as "Executive Session: Pending Litigation Issues" and "Reconvene for New Business". The "new business" to be discussed by the BOCC after re convening is not specified. Earlier in the same agenda, and in accordance with the usual practice, the new business scheduled for discussion prior to the executive session is described with particularity.

21. The audio recording of the meeting reflects that at the conclusion of that portion of the meeting which preceded the executive session, Rowland announced that the BOCC would be going into executive session "to talk about litigation issues" and that there would be a brief recess before doing so. No mention was made of considering issues pertaining to indemnification.

22. Brown was attending the meeting because, as a member of the Elbert County Planning Commission, he had an interest in matters related to a grant application funding a new county master plan grant and the appointment of Planning Commission members listed on the agenda. Brown left the meeting at the recess because it did not appear that any further topics of interest would be discussed.

23. Had Brown known that the indemnification issues were to be considered and voted upon he would have stayed and attempted to comment in opposition to the resolutions.

24. Other members of the public, as well as reporters for local media, also left at the recess. Brown alleges on the basis of information and belief that other members of the public, as well as reporters for local media, would have stayed to observe the meeting had the true agenda been revealed.

25. After the recess, the BOCC voted unanimously to go into executive session to discuss the Duvall and Radeker litigation.

26. Upon reconvening after the executive session, Dore moved to add a resolution to the agenda indemnifying Rowland for any judgment entered against him individually in Duvall I and Duvall II. Ross seconded the motion. Ross subsequently recused himself from any further consideration of the matter, as did Rowland.

27. As a result of the recusals, Dore was the sole county commissioner voting to approve the addition of the resolution described in paragraph 26 above to the agenda as well as for the ultimate approval of the resolution.

28. The BOCC next turned to a resolution to indemnify Rowland, Ross, and Schlegel for any judgment entered against them individually in Radeker. Dore moved to place the resolution on the agenda. Ross seconded the motion. Ross subsequently recused himself from any further consideration of the matter, as did Rowland.

29. As a result of the recusals, Dore was the sole county commissioner voting to approve the addition of the resolution described in paragraph 28 above to the agenda, as well as for the ultimate approval of the resolution.

30. The audio recording of the meeting reflects that, prior to the recusals and vote on the resolution described in paragraph 28 above, County Attorney Wade Gateley, said, in the context of a longer statement, “I have prepared an indemnification resolution and allowed it to be placed on the agenda for a vote.”

31. Brown alleges, based on information and belief, that the “indemnification resolution” referred to by the county attorney was, in fact, two written resolutions. The first of these was designated as Resolution 15-10 (Exhibit 2), pertaining to indemnity for Rowland, Ross, and Schlegel in the event of a personal judgments against them in Radeker. The second was Resolution 15-11 (Exhibit 3), pertaining to indemnity for Rowland for any personal judgment against him in Duvall I or Duvall II. Both resolutions were signed by Dore on April 8, 2015. Rowland and Ross also signed the resolution with a notation indicating their recusal.

32. On April 27, 2015, Rowland purchased a cashier’s check from Bank of the West payable to Elbert County. The memo line on the check read “ALJ” an apparent reference to Administrative Law Judge Spencer’s ruling. That same day he submitted a county reimbursement form for \$1000 for invoice no. “RR2015-ALJ.”

33. On April 30, 2015, Rowland signed a warrant for funds in the Elbert County Treasury payable to himself in the amount of \$1000. Brown alleges, on the basis of information and belief, that this warrant was issued pursuant to Resolution 15-11 passed by the BOCC at the April 8, 2015, meeting.

FIRST CLAIM FOR RELIEF: COLORADO OPEN MEETINGS LAW

34. Brown restates the allegations in paragraphs 1-34 above.

35. Brown is a “citizen of the state” under C.R.S. § 24-6-402(9) and as such has standing to bring a claim for declaratory and injunctive relief under the OML.

36. Brown alleges, on the basis of information and belief, that the indemnification resolutions were prepared in advance of the executive session, that the county commissioners knew prior to the meeting that the matter would be discussed, and that it was possible to have the issue of providing indemnity to past and present BOCC commissioners placed on the agenda at least 24 hours in advance of the meeting.

37. Though the motion to convene the executive session is not reflected on the audio recording of the meeting, the minutes of the meeting (Exhibit 4 at 4) state that “Commissioner Dore moved to go into an Executive Session to discuss Readeker [sic] and the Jill Duvall litigation. Commissioner Ross 2nd. All voted AYE.”

38. The omission of any mention of indemnity on the posted agenda and the effect of the wording of the motion described in paragraph 36 above was to obscure the true purpose of the executive session and deceive the public.

39. The notice and conducting of the BOCC meeting on April 8, 2015, violated the OML in the following respects:

a. The BOCC failed to provide full and timely notice of the meeting 24 hours in advance as required by C.R.S. §24-6-402(2)(c) by failing to provide “specific agenda information” as required by that subsection. Specifically, the agenda (Exhibit 1) makes no effort to describe the nature of the new business to be considered after reconvening from the executive session and provides a misleading description of the purpose of the executive session.

b. The BOCC failed to comply with the requirements of C.R.S. § 24-6-402(4) in convening the executive session. Specifically, the BOCC failed to identify, at a public meeting, the statutory provision authorizing the executive session and failed to make a public announcement of, in the words of the statute, “the particular matters to be discussed in the executive session in as much detail as possible without compromising the purpose for which the executive session” was to be held.

c. Brown alleges, based on information and belief, that the BOCC adopted a proposed position or formal action behind closed doors.

40. Based on the violations of the OML described above, Brown is entitled to declaratory relief holding that Resolutions 15-10 and 15-11 executed on April 8, 2015, are unlawful, void, and of no effect.

SECOND CLAIM FOR RELIEF: RESOLUTIONS PASSED BY VOTE OF SINGLE COMMISSIONER VOID

41. Brown restates the allegations in paragraphs 1-40 above.

42. A vote of two of the three Elbert County Commissioners is required for resolutions to be passed.

43. Since only a single commissioner voted for the approval of Resolutions 15-10 and 15-11 executed on April 8, 2015, they were not lawfully adopted, and Brown is, therefore, entitled to declaratory relief holding them unlawful, void, and of no effect.

.THIRD CLAIM FOR RELIEF: INJUNCTIVE RELIEF

44. Brown restates the allegations in paragraphs 1-43 above.

45. Pursuant to C.R.S. §30-25-110(1), it is the responsibility of the BOCC to authorize payments from the county treasury and it is Rowland's responsibility, as chair of the BOCC, to sign warrants and orders for payment.

46. Since Resolutions 15-10 and 15-11 are void Rowland should be enjoined from signing any warrant, order, or other instrument drawn on the county treasury in accordance with those resolutions.

WHEREFORE, Plaintiff prays for judgment in his favor and against Defendants as follows:

1. For declaratory relief holding that Resolutions 15-10 and 15-11 executed by members of the BOCC on April 8, 2015, are unlawful, void, and of no effect.

2. For an injunction enjoining Defendant Robert Rowland from signing any warrant, order, or other instrument drawn on the county treasury in accordance with said Resolutions 15-10 and 15-11.

3. For costs and attorneys fees in this action.

4. For such other and further relief as the court may deem proper.

Dated: October __, 2015

RICHARD BROWN
Plaintiff, appearing *pro se*