Coates' Canons Blog: The Whole Enchilada: NC Court of Appeals Rules on Access Requirements Under the Open Meetings Law

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The March, 2010 meetings of the Wake County School Board attracted lots of interest and overflow crowds. Two meetings occurred on March 23. The first was a "Committee of the Whole" (COW) meeting, held in a small meeting room in which there was, at times, seating only for the board members and staff. The second was a full board meeting in a larger room that quickly reached capacity. The board made arrangements for audiovisual feeds in overflow space, but some people were unable to get into the main meeting room. Some of these individuals sued the school board alleging that their inability to obtain access violated the state's open meetings law. The trial court dismissed the lawsuit and yesterday a unanimous three-judge panel of the Court of Appeals affirmed the trial court's ruling in ***Garlock v. Wake County Board of Education.***

The case is important because it provides new explanations about the access requirements under the **open meetings law** , especially in situations involving big crowds of people. The core holdings are: 1) The test for compliance with the open meetings law is *not* whether any person was denied access, but is instead, whether reasonable measures were taken to provide access. 2) The law requires a public body to provide advance notice of its plan to use a ticketing process for admission to an official meeting. 3) The law does not require a public body to move a meeting to a different building, even if a larger space is available, but may require moving a meeting to a different room in the same building if a larger one is available. 4) The availability of media coverage of a meeting does not, by itself, satisfy the public body's obligation to provide access to the meeting. 5) The open meetings law does not require special accommodations for individuals with disabilities or special needs, although other laws may. These holdings are summarized below.

1) The test for compliance with the open meetings law is *not* whether any person was denied access, but is instead, whether reasonable measures were taken to provide access. No North Carolina court has previously interpreted the language in the open meetings law that says "official meetings of public bodies must be open to the public" and that **"any person is entitled to attend such a meeting." G.S. 143-318.10(a).** Clearly, the court noted, a secret meeting at which no member of the public is allowed violates the law. Slip op. at 27. But what about a meeting from which some members of the public who wish to attend are excluded due to lack of space? Is there a point when an open meeting is not open enough? Relying on the purposes of the statute (gleaned from the factors in **G.S. 143-318.16A** that judges are to use in fashioning remedies for violations o the law), and based on national case law, the court concluded that the law requires public bodies to **"take reasonable measures to provide for public access to its meetings."** Slip op. at 37, quoting from the trial court opinion. If a court finds that reasonable measures have been taken, the fact that some individuals could not attend does not constitute a violation of the law. There is some suggestion that the law might be violated if particular categories of individuals are excluded, but it's just a mention and probably doesn't rise to an actual holding in the case. See, slip op. at 29, citing Schwing & Taylor, *Open Meetings Laws,* sec. 5.90 (1994). It's also important to consider that the holding in this case is based on the specific circumstances presented. What is reasonable in one situation may not be in another. Future cases will require case-by-case review of whether the agency's actions were reasonable under the specific circumstances and in light of the purposes of the law.

2) The law requires a public body to provide advance notice of its plan to use a ticketing process for admission to an official meeting. The facts at trial indicated that the School Board used a ticketing system, but that there was no advance notice that the system would be used or of how it would work. The court found that this was not a reasonable approach. In this case, it didn't affect the result, but the holding suggests that if a public body plans to use a ticketing system to allocate seats at an official meeting, the notice of the meeting should include information about the ticketing system and how it will work. The court concluded that "notice of the location and time of the meeting is worthless if a person planning to attend a meeting is not also informed that a ticket will be required." Slip op. at 43. A ticketing procedure with advance notice is a reasonable measure of providing access, even if not everyone can get a ticket. A ticketing procedure without notice,

apparently, is not reasonable.

3) The law does not require a public body to move a meeting to a different building, even if a larger space is available, but may require the agency to move a meeting to a different (larger) room in a building if one is available. The court agreed with the plaintiffs' argument that the Board's COW meeting in a room big enough only for the board members and the staff violated the open meetings law. There was no room for members of the public who sought to attend the meeting but there were larger available rooms in the building. Failure to move to a room within the building was not reasonable, the court ruled, since the move would not have required a new notice. In contrast, the court held that the board was not required to move to a different building, which could have accommodated more people, even though one was available, since doing so would require additional notice and thus a delay of 48 hours. By this logic, it seems possible that moving to a different room within the building may not be legally necessary if the notice of the meeting lists the room, rather than the building.

4) The availability of media coverage of a meeting does not, by itself, satisfy the public body's obligation to provide access to a meeting. The meeting of the COW, which the court found did not provide reasonable access, was live-streamed by the local media. The court held that this did not constitute access under the open meetings law: "media coverage alone does not render a meeting open; a reasonable opportunity for access by members of the public must be made." Slip op. at 44.

5) The open meetings law does not require special accommodations for individuals with disabilities or special needs, although other laws may. One of the plaintiffs, who suffers from a physical disability, argued that the School Board violated the open meetings law by not setting aside sufficient seating for individuals with disabilities. She argued that her experience at the meeting "caused her to believe that she could not safely attend future meetings because of the lack of adequate accommodations for her disability." Slip op. at 45. Noting that other laws, such as the federal **Americans With Disabilities Act** and the state's **Persons with Disabilities Protection Act**, might impose additional requirements on public agencies, the court concluded that the open meetings law does not. The court held that the plaintiff's medical condition was "simply not relevant to the determination of whether an Open Meetings Law violation occurred." Slip op. at 48.

The case also involved a procedural issue: The plaintiffs asked for several types of relief ranging from temporary injunctions, to permanent injunctions, to invalidation of the actions taken. The open meetings law gives judges this range of options, depending upon the type of violation and the impact it has on the right of access afforded under the law. See generally, **G.S. 143-318.16**, **-318.16A** The statute requires courts to give these lawsuits priority in scheduling, so matters are heard on an expedited schedule in comparison to other types of lawsuits. The public records law contains **a similar provision**. The School Board attorney argued that they were "not prepared to address the whole enchilada" in the expedited hearing, and that the court should allow time for the full range of discovery before ruling on the merits of the whole case. The court held that despite some confusion in what the parties argued, it was clear that the plaintiffs had asked for the full range of relief, which is what the trial court order addressed. Citing a Nebraska case, the court noted, "[I]t is never wise to ask for something without being fully aware that you may just get what you ask for." Slip op. at 18. Since the School Board didn't contest the trial court's dismissal of all the Plaintiff's claims, the appeals court didn't actually rule on the issue of whether a trial court must allow full discovery before ruling on the merits. That issue is still open to consideration in a future case. The court did frown on the School Board's request to both affirm the trial court's order and to remove objectionable findings and conclusions in the order. This, the court noted, was "inconsistent with the fundamental precept of Anglo-American jurisprudence that you cannot have your cake and eat it, too."

Links

- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=143-318.10
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=143-318.16A
- www.ada.gov/pubs/ada.htm
- www.ncleg.net/enactedlegislation/statutes/html/bychapter/chapter_168a.html
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=143-318.16
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