

2018 MAR 20 PM 3: 38

JEANNE M. STEPHEN
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO
GENERAL TRIAL DIVISION

STATE OF OHIO, ex rel. IRVIN W.
HUTH,

RELATOR

vs.

VILLAGE OF BOLIVAR,

RESPONDENT

CASE NO. 2017 CV 11 0884

JUDGE
EDWARD EMMETT O'FARRELL

JUDGMENT ENTRY - NON-ORAL
CONSIDERATION CONDUCTED ON
3/19/2018 PERTAINING TO 1/3/2018
DEFENDANT'S MOTION FOR
JUDGMENT ON THE PLEADINGS -
MOTION GRANTED, IN PART, AND
DEFERRED, IN PART - HEARING
REGARDING REMEDIES TO BE
SCHEDULED BY COURT
ADMINISTRATOR - ORDERS ENTERED

This matter was considered by Edward Emmett O'Farrell, Judge, Court of Common Pleas,
Tuscarawas County, Ohio, General Trial Division, on 3/19/2018, on a non-oral basis relative to the
following:

- ◆ Relator's **Verified Complaint in Mandamus and for Injunction** filed on 11/29/2017
- ◆ **Answer of [Respondent] The Village of Bolivar** filed 1/3/2018
- ◆ Respondent's **Motion for Judgment on the Pleadings** filed 1/3/2018
- ◆ Relator's **Opposition to Respondent Village of Bolivar's Motion for Judgment on the Pleadings** filed 2/14/2018

The Court

FINDS that State of Ohio, ex. rel. Irvin W. Huth (hereafter "Relator") filed a Verified Complaint in Mandamus and for Injunction against the Village of Bolivar (hereafter "Respondent") on 11/29/2017, which alleged that violations of the Ohio Open Meetings Act occurred at four different council meetings. Count One alleged that Respondent violated R.C. 121.22(G) at a Special Council Meeting on 12/19/2016. Count Two alleged that Respondent violated R.C. 121.22(G) at a Special Council Meeting on 5/18/2017. Count Three alleged that Respondent violated R.C. 121.22(G) at a Council Meeting on 6/5/2017. Count Four alleged that Respondent violated R.C. 121.22(G) at a Council Meeting on 10/2/2017. Relator requested a total civil forfeiture in the amount of \$2,000.00, injunctive relief under R.C. 121.22(I)(1), and reasonable attorney's fees and costs under R.C. 121.22(I)(2)(a).

FINDS that Respondent filed an Answer on 1/3/2018, admitting all of the material allegations in Relator's Verified Complaint in Mandamus and for Injunction. However, Respondent's Answer disputes the requested remedies.

FINDS that Respondent requests judgment on the pleadings in Relator's favor. Respondent admits the factual allegations contained in the Complaint and admits that it violated R.C. 121.22. Respondent urges the Court to issue a judgment on the pleadings that Respondent committed the alleged R.C. 121.22 violations and issue an injunction ordering Respondent to refrain from violating R.C. 121.22 by failing to fully specify the basis for entering into an executive session. Respondent further requests that the Court set the issue of damages and attorney fees for a hearing.

FINDS that Relator opposes the Respondent's arguments regarding the appropriate remedies to be awarded in this case. Relator argues that material factual issues exist pertaining to the appropriate relief to be granted in this case.

FINDS that Civ.R. 12(C) requires a determination that no material factual issues exist and that judgment is warranted as a matter of law. *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570, 1996-Ohio-459, 664 N.E.2d 931, citing *Burnside v. Leimbach*, 71 Ohio App.3d 399, 402-403, 594 N.E.2d 60 (1991). "Civ.R. 12(C) motions are specifically for resolving questions of law." *Pontious*, at 570, citing *Peterson v. Teodosio*, 34 Ohio St.2d 161, 166, 297 N.E.2d 113 (1973); *Davis v. City of Canton*, 5th Dist. Stark No. 2013CA00080, 2014-Ohio-195, ¶ 10.

FINDS that R.C. 121.22 provides, in relevant part, as follows:

(A) This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.

* * *

(G) Except as provided in divisions (G)(8) and (J) of this section, the members of a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of the consideration of any of the following matters:

(1) To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the public employee, official, licensee, or regulated individual requests a public hearing. Except as otherwise provided by law, no public body shall hold an executive session for the discipline of an elected official for conduct related to the performance of the elected official's official duties or for the elected official's removal from office. If a public body holds an executive session pursuant to division (G)(1) of this section, the motion and vote to hold that executive session shall state which one or more of the approved purposes listed in division (G)(1) of this

section are the purposes for which the executive session is to be held, but need not include the name of any person to be considered at the meeting.

* * *

If a public body holds an executive session to consider any of the matters listed in divisions (G)(2) to (8) of this section, the motion and vote to hold that executive session shall state which one or more of the approved matters listed in those divisions are to be considered at the executive session.

* * *

(I)

(1) Any person may bring an action to enforce this section. An action under division (I)(1) of this section shall be brought within two years after the date of the alleged violation or threatened violation. Upon proof of a violation or threatened violation of this section in an action brought by any person, the court of common pleas shall issue an injunction to compel the members of the public body to comply with its provisions.

(2)

(a) If the court of common pleas issues an injunction pursuant to division (I)(1) of this section, the court shall order the public body that it enjoins to pay a civil forfeiture of five hundred dollars to the party that sought the injunction and shall award to that party all court costs and, subject to reduction as described in division

(I)(2) of this section, reasonable attorney's fees. The court, in its discretion, may reduce an award of attorney's fees to the party that sought the injunction or not award attorney's fees to that party if the court determines both of the following:

(i) That, based on the ordinary application of statutory law and case law as it existed at the time of violation or threatened violation that was the basis of the injunction, a well-informed public body reasonably would believe that the public body was not violating or threatening to violate this section;

(ii) That a well-informed public body reasonably would believe that the conduct or threatened conduct that was the basis of the injunction would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

* * *

FINDS that Respondent's Answer admits to violations of R.C. 121.22 at its meetings on 12/19/2016, 5/18/2017, 6/5/2017, and 10/2/2017.

FINDS that no material factual issues remain regarding whether Respondent violated R.C. 121.22.

FINDS that Relator is entitled to judgment in his favor on Counts One, Two, Three and Four of his Verified Complaint in Mandamus and for Injunction.

FINDS, however, that material factual issues exist pertaining to the appropriate remedies, including the injunction or injunctions, to be issued in this case.

FINDS, therefore, that Respondent's **Motion for Judgment on the Pleadings** should be **granted, in part**, as it pertains to Relator's entitlement to judgment in his favor on Counts One, Two, Three and Four of his Complaint, and **deferred, in part**, as it pertains to the issuance of an injunction.

FINDS that any findings or orders regarding the appropriate remedies, including the injunction or injunctions to be issued, in this case should be deferred until after the Hearing on remedies requested by Respondent.

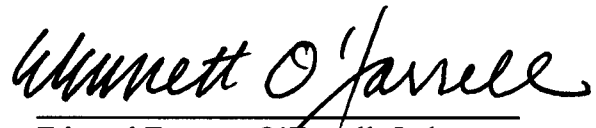
FINDS that the Court Administrator's Office, by notice of assignment and after prior consultation with legal counsel for the parties, should schedule this matter for a **Final Hearing** pertaining to the appropriate **remedies** in this case.

It is therefore

ORDERED that Respondent's **Motion for Judgment on the Pleadings** is **granted, in part**, as it pertains to Relator's entitlement to judgment in his favor on Counts One, Two, Three and Four of his Complaint, and **deferred, in part**, as it pertains to the issuance of an injunction.

ORDERED that any findings or orders regarding the appropriate remedies, including the injunction or injunctions to be issued, in this case shall be deferred until after the **Final Hearing on remedies** requested by Respondent.

ORDERED that the Court Administrator's Office, by notice of assignment and after prior consultation with legal counsel for the parties, shall schedule this matter for a Hearing pertaining to the appropriate remedies in this case.



Edward Emmett O'Farrell, Judge

3/20/2018
Date

cc: Court Administrator's Office ✓ *BT*
Atty. Michela Huth
Atty. Jilliann L. Gardner