

FILED

2023 OCT -9 AM 9:48

IN THE CIRCUIT COURT OF CRITTENDEN COUNTY, ARKANSAS
CIVIL DIVISION

TAMMY BELL AND CHERYL ROE

PLAINTIFFS

v.

CASE NO.

HCV-23-897

WEST MEMPHIS SCHOOL DISTRICT;
WEST MEMPHIS SCHOOL DISTRICT BOARD OF EDUCATION

DEFENDANTS

COMPLAINT

Comes now the Plaintiffs, Tammy Bell and Cheryl Roe, and for their cause of action against the Defendants, West Memphis School District and West Memphis School District Board of Education, states:

PARTIES, JURISDICTION, AND VENUE

1. This is an action brought pursuant to the Arkansas Freedom of Information Act of 1967 (herein "FOIA"), as amended, codified as Ark. Code. Ann. § 25-19-101 *et seq.*

2. Plaintiff Tammy Bell is an adult citizen of the State of Arkansas and a resident of Crittenden County. Plaintiff Cheryl Roe is an adult citizen of the State of Arkansas and a resident of Crittenden County. Plaintiffs bring this action as a matter of right under Arkansas Code Annotated § 25-19-107. Plaintiffs are taxpayers who reside in the West Memphis District of Crittenden County, and who pay taxes that support the West Memphis School District.

3. Defendant West Memphis School District is a school district organized pursuant to the laws of the State of Arkansas. The West Memphis Board of Education (sometimes referred to as “the Board”) is the governing body of the West Memphis School District. The West Memphis Board of Education is tasked with complying with the open-meetings provisions of the Arkansas Freedom of Information Act (“FOIA”), codified at Ark Code Ann. § 25-19-106.

4. Jurisdiction and venue are appropriate in the Court pursuant to Ark. Code Ann. § 25-19-107(a).

FACTUAL BACKGROUND

5. On or about April 18, 2023, the West Memphis Board of Education met for a regularly scheduled Board meeting. Board member Basil Joiner made a motion in the meeting to go into executive session for a personnel matter. After returning from the executive session, Mr. Joiner made a motion to terminate Superintendent Richard Atwill’s contract effective immediately. The Board voted (4-3) in favor of firing Atwill, without explanation, and paying him \$350,000 as part of a severance package. (Exhibit A; Board Meeting Minutes)

6. That according to a news report, Board member Dr. Kimberly Wolfe was not told why Atwill’s contract was terminated. Dr. Wolfe reportedly stated, “I have no idea. I don’t know why. There was no explanation given.”

7. That the Board then named Willie Rhodes as interim superintendent nearly a day after terminating Atwill’s contract.

8. On or about May 31, 2023, the West Memphis School District announced that Dr. Terrence Brown was selected as the new superintendent after the Board conducted interviews. On June 6, 2023, the Board held a special meeting and unanimously approved Dr. Brown’s contract.

9. Plaintiffs were unaware that the Board interviewed any candidates for the position

because no notice was given to the public. A FOIA Request was submitted seeking all documentation related to these interviews. An email chain was obtained showing that the Board secretly interviewed four candidates for the superintendent position on May 24th and 25th. (Exhibit B). The candidates were Terrence Brown, Wyonia Scott, Toriano Green, and Rodriguez Broadnax.

10. No notice of these superintendent interviews was provided to the Plaintiffs, to the media, or the public pursuant to § 25-19-106.

11. Board member Dr. Kimberly Wolfe was apparently concerned that the Board violated FOIA by not giving notice of the interviews and reached out to an Arkansas School Boards Association attorney to ask about the open-meetings provisions of the AFOIA. (Exhibit C) According to Dr. Wolfe, “the meetings were not open to the public and the dates/times were not publicized.” Dr. Wolfe did not participate in any of the interviews according to the emails identified in Exhibit C.

12. The Arkansas Freedom of Information Act states: “It is vital in a democratic society that the public business be performed in an open and public manner so that the electors shall be advised of the performance of public officials and of the decision that are reached in public activity and in making public policy. Toward that end, this [act] is adopted, making it possible for them, or their representatives to learn and report fully the activities of their public officials.” As the United States Supreme Court has stated, “The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire Co.*, 437 U.S. 214, 242.

13. Under FOIA, “except as otherwise specifically provided by law, all meetings, formal or informal, special or regular, of the governing bodies of all municipalities, counties,

townships, and school districts and all boards, bureaus, commissions, or organization of the State of Arkansas, except grand juries, supported wholly or in part by public funds or expending public funds, shall be public meetings.” Ark. Code Ann § 25-19-106(b)(2).

14. Furthermore, FOIA requires that a governing body give notice of special or emergency meetings at least two hours in advance to media organizations that have requested notice in order that the public shall have representatives at the meeting. Ark. Code Ann. § 25-19-106(b)(2).

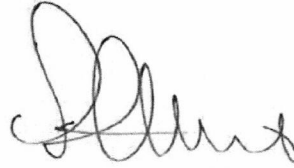
15. The interviews held by the Board in May 2023 violated FOIA in that no notice of the meetings were given to the public and the public was deprived of its right to observe the public portions of the meeting.

16. The Court should declare that the interviews on May 24th and 25th constitute illegal meetings under FOIA which were not public and for which no notice was given. The Court should further enjoin the Defendants from conducting public business in secret in the future.

Prayer for Relief

WHEREFORE, the Plaintiffs pray that the Court grant the relief requested herein, that the Court hold a hearing on this matter and declare that the meetings held by the West Memphis Board of Education constituted an unlawful meeting under FOIA which was not public and for which no notice was given; that the Court enjoin the Defendants from conducting business out of the public view through secret meetings; for such other relief as is requested herein; for costs; for attorney’s fees; and for such other relief as is just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Joey McCutchen', written in a cursive style.

Joey McCutchen, Ark. Bar No. 88045
Stephen Napurano, Ark. Bar No. 2017071
McCutchen Sexton Napurano – The Law Firm
P.O. Box 1971
Fort Smith, AR 72902
Phone (479) 783-0036
Facsimile (479) 783-5168



WEST MEMPHIS SCHOOL DISTRICT BOARD

*Amended
Minutes
approved 4/26/23*

JOANN FAULKNER - JOYCE GRAY - ANTHONY HAMPTON - BASIL JOINER - EMILY SCARBROUGH - BILLY THOMEN - DR. KIMBERLY WOLFE

**West Memphis Board of Education
April 18, 2023
6:00 West Jr. High
Minutes**

The West Memphis Board of Education met at West Jr. High on Tuesday April 18, 2023 for their regular scheduled Board meeting. All board members were present.

Ms. Faulkner asked Reverend King to open the meeting with prayer.

Ms. Faulkner recognized all visitors to the meeting.

Ms. Faulkner asked to move and place items 2 and ~~11~~¹² after ~~Old Business~~^{#196 New Hires} on the Agenda.

Mr. Joiner made a motion to table items 6 through 12. The motion was seconded by Mr. Hampton. The vote was as follows: Vote-Wolfe-no, Scarborough-no, Joiner-yes, Faulkner-yes, Thoman-no, Hampton-yes and Gray-yes. The motion passed with a vote of 4-yes votes and 3- no votes.

Mr. Joiner made a motion to approve paying ~~April~~^{March} bills. The motion was seconded by Mrs. Gray. All in favor the motion passed.

Mr. Thomen made a motion to approve the Board Financial Report. The motion was seconded by Mrs. Wolf. The vote was Wolf-yes, Scarbrough-yes, Joiner-no, Faulkner-no, Thomen-yes, Hampton-no and Gray-no. The motion did not pass with a vote of 3 yes votes and 4 no votes.

Mr. Atwill announced that the Choral students at the Academies of West Memphis would be performing Cinderella at the Performing Arts Center on the AWM campus, on Friday, April 28 and Saturday, April 29 at 7:00 p.m. Admission will be \$5.00.

Mrs. Gray made a motion that a Feasibility Study be done at West Jr. High and East Jr. High to determine the equitability of additional resources at both schools. The motion was made by Mr. Joiner. All in favor the motion passed.

Seconded



WMP WEST MEMPHIS SCHOOL DISTRICT BOARD

JOANN FAULKNER - JOYCE GRAY - ANTHONY HAMPTON - BASIL JOINER - EMILY SCARBROUGH - BILLY THOMEN - DR. KIMBERLY WOLFE

Mrs. Scarbrough made a motion to approve the March 14, Board minutes with a correction. Dr. Wolfe seconded the motion. All in favor the motion passed.

Mr. Atwill gave each board member a copy of the School Districts Resignations. Mr. Thomen made a motion to approve the list. Seconded by Mr. Hampton. All in favor the motion passed.

Mr. Atwill gave each board member a copy of the School Districts New Hires.

Mrs. Gray ask about the description of the duties for the New. Mrs. Gray made a motion to approve everyone on the list but the Administrative Assistant position. She asked did he have a description of what this person duties would be. He did not have one with him. Mrs. Gray made a motion to approve all the new hires except the new Administrative Assistant position. Seconded by Mrs. Scarbrough. All in favor the motion passed.

Mrs. Gray ask was the approved school calendar to be called a 12 Month Calendar or a Hybrid Calendar. Mr. Atwill told her it should be called A 12 Month Calendar.

Mr. Atwill passed out an Arkansas Superintendent Evaluation Professional Growth plan to all the board members. At this time Mr. Joiner made a motion to go into executive session for a personnel matter. Mrs. Gray seconded the motion. Mr. Joiner, Mrs. Faulkner, Mr. Hampton Mrs. Gray and Mr. Atwill went into a separate room to meet. Dr. Wolfe, did not go into the executive session. On returning from the executive session Mr. Joiner made a motion to terminate Richard Atwill's contract effective immediately. And to appoint Mr. Willie Rhodes as the interim Superintendent. Mr. Atwill will receive payment of his outstanding 3-year contract through June 30, 2025 along with payment for his benefits, maintain ownership of his district provided school vehicle. Mrs. Gray seconded the motion. The vote was Dr. Wolfe-no, Mrs. Scarbrough-no, Mr. Joiner -yes, Mrs. Faulkner-yes, Mr. Thomen-no Mr. Hampton-yes and Mrs. Gray-yes. Mr. Joiner then ask Mrs. Faulkner to direct the school attorney Brad Beavers to post the position with April 19, 2023 being the first day for 14 days. Mr. Beavers told Mrs. Faulkner that he would not be available to do that. Mr. Joiner then ask her to tell the West Memphis Human Resource Officer to post the position. Also, to contact the Great Rivers Service Coop and ask them to screen all applicants for eligibility. They would be allowed up to \$12,000 for any expenses they accrue.

Scarborough
did
go into
exec.
session

WMP WEST MEMPHIS SCHOOL DISTRICT BOARD

JOANN FAULKNER - JOYCE GRAY - ANTHONY HAMPTON - BASIL JOINER - EMILY SCARBROUGH - BILLY THOMEN - DR. KIMBERLY WOLFE

The PPC representative Candice Johnson spoke to the board about two proposals that the PPS has. The first one is to allow duty free certified teachers to be allowed to leave campus for lunch. They will have to notify the Principal's office that they are leaving. The second request was to give certified staff 3 days of paid bereavement for death in the immediate family.

Mr. Faulkner inquired about the Expulsion of a student from East Jr. High. Mr. Beavers told them due to the fact that the board did not have a standing Superintendent they didn't have anyone to recommend the student for expulsion at this time.

To AWM students spoke to the board about the how changing of the school calendar will affect the students of the Academies of West Memphis.

Mrs. Gray made a motion to adjourn, Mr. Joiner seconded the motion. All in favor the motion passed.

Joann Faulkner- President

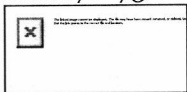
Emily Scarbrough-Secretary

----- Forwarded message -----

From: **Cynthia Craig** <ccraig@wmsd.net>
Date: Wed, May 17, 2023 at 2:10 PM
Subject: Re: Superintendent Candidates - Interview Schedule
To: Willie Rhodes <rhodes@wmsd.net>

Mr. Green has confirmed his slot of 5pm.

Thank You,
Cynthia Craig
HR Director
West Memphis School District
[Email:ccraig@wmsd.net](mailto:ccraig@wmsd.net)
Phone:870-735-1915
Fax:870-732-8643



"Sometimes it takes only one act of kindness and caring to change a person's life."

On Wed, May 17, 2023 at 12:47 PM Cynthia Craig <ccraig@wmsd.net> wrote:

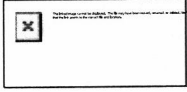
Mr. Rhodes I emailed & called to invite the 4 candidates in for an interview. They were told first come first serve. As of now 3 have responded and the 4 slot (Green) was given out of process of elimination. Please see below:

Terrence Brown	24-May	5pm
Wyomia Scott	24-May	6:30
Toriano Green	25-May	5pm
Rodriguez Broadnax	25-May	6:30

Thank You,
Cynthia Craig



HR Director
West Memphis School District
Email:ccraig@wmsd.net
Phone:870-735-1915
Fax:870-732-8643



"Sometimes it takes only one act of kindness and caring to change a person's life."

----- Forwarded message -----

From: **Cynthia Craig** <ccraig@wmsd.net>

Date: Fri, May 26, 2023 at 7:52 AM

Subject: Re: Superintendent Interview - 5/24 & 5/25 301 S. Avalon (Conference Room)

To: jfaulkner@wmsd.net <jfaulkner@wmsd.net>

Cc: jgray@wmsd.net <jgray@wmsd.net>, anthonyh@wmsd.net <anthonyh@wmsd.net>, bjoiner@wmsd.net <bjoiner@wmsd.net>, Emily Scarbrough <escarbrough@wmsd.net>, bthomen@wmsd.net <bthomen@wmsd.net>, Dr. Kimberly Wolfe <kwolfe@wmsd.net>, Willie Rhodes <rhodes@wmsd.net>

Good morning please see below:

Good afternoon, Ms. Craig,

I wanted to share an appreciation of gratitude to the board members for yesterday's interview. I don't have their email address, and I hope you can share my gratitude below with them.

Dear Board of Trustees,

I want to extend my heartfelt appreciation for the opportunity to interview for yesterday's superintendent position. I am personally expressing my gratitude to each board member for their time and consideration.

Throughout the interview, I endeavored to showcase my ability to bring innovation and act as a change agent within the school district. My expertise in swiftly analyzing and utilizing data, along with my proficiency in implementing programs like C.T.E., S.T.E.M., and Coding, would undoubtedly contribute to the growth and advancement of the district.

I am wholeheartedly committed to leveraging my skills and experiences to drive positive change, enhance educational opportunities, and ensure that West Memphis students are fully prepared for the evolving demands of the future.

While time constraints limited our discussion, there were several other initiatives I am passionate about, including the Agriculture Stem Greenhouse project, which integrates agricultural education and provides fresh vegetables for our families. I also wanted to highlight my successful leadership in navigating the school through its dissolution, among other accomplishments.

Once again, I want to express my deepest gratitude for your time and consideration. I eagerly await the opportunity to contribute to the continued success of the West Memphis School District.

Sincerely,

Ms. Wyomia L. Scott

Thank You,
Cynthia Craig
HR Director
West Memphis School District
Email: ccraig@wmsd.net
Phone: 870-735-1915
Fax: 870-732-8643



"Sometimes it takes only one act of kindness and caring to change a person's life."

On Wed, May 24, 2023 at 9:08 AM Cynthia Craig <ccraig@wmsd.net> wrote:

Good morning, interviews are scheduled for today & tomorrow. I received the message below from Mrs. Scarbrough:

Hi Cynthia,

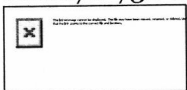
Unfortunately, I will not be able to attend some of these due to a schedule conflict.

Thank you for letting me know the times. I'll try to make as many as possible.

Sincerely,

Emily Scarbrough

Thank You,
Cynthia Craig
HR Director
West Memphis School District
Email: ccraig@wmsd.net
Phone: 870-735-1915
Fax: 870-732-8643



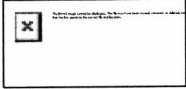
"Sometimes it takes only one act of kindness and caring to change a person's life."

On Mon, May 22, 2023 at 10:19 AM Cynthia Craig <ccraig@wmsd.net> wrote:

Good morning, please see below the interview schedule for the candidates for the current open position of Superintendent scheduled this week in the Conference Room of the Central Office Administration Building. The candidate's interview time was selected from a first come first serve basis per the interview request email sent out simultaneously. Mr. Harris has agreed to return to the Central Office at approximately 8:00pm to lock up/ set the alarm as he resides closer. If he is needed prior to 8pm please have someone contact him to advise him of the new closure time. If you have any questions or concerns please feel free to contact Mr. Rhodes.

Terrence Brown	24-May	5:00pm
Wyomia Scott	24-May	6:30pm
Toriano Green	25-May	5:00pm
Rodriguez Broadnax	25-May	6:30pm

Thank You,
Cynthia Craig
HR Director
West Memphis School District
Email:ccraig@wmsd.net
Phone:870-735-1915
Fax:870-732-8643



"Sometimes it takes only one act of kindness and caring to change a person's life."

From: Lucas Harder <lucas@arsba.org>
Date: May 30, 2023 at 10:58:35 AM CDT
To: "Dr. Kimberly Wolfe" <kwolfe@wmsd.net>
Subject: RE: Illegal Board Meetings

That is correct. As long as the official decisions are made during the legal meeting, then they are legal.

Lucas

-----Original Message-----

From: Dr. Kimberly Wolfe <kwolfe@wmsd.net>
Sent: Tuesday, May 30, 2023 10:56 AM
To: Lucas Harder <lucas@arsba.org>
Subject: Re: Illegal Board Meetings

Ok. So I'm clear, it doesn't matter that what we are voting on tonight took place in meetings that did not meet the requirements under A.C.A. § 25-19-106?

Kimberly Wolfe, PhD
614.326.9318 (phone)

On May 30, 2023, at 10:48 AM, Lucas Harder <lucas@arsba.org> wrote:

As long as this meeting meets all of the requirements under A.C.A. § 25-19-106, including at least two hour notice to the press and the public, then the board can vote to hire one of the candidates.

Lucas

-----Original Message-----

From: Dr. Kimberly Wolfe <kwolfe@wmsd.net>
Sent: Tuesday, May 30, 2023 10:47 AM
To: Lucas Harder <lucas@arsba.org>
Subject: Re: Illegal Board Meetings

Hello, Lucas:

Being that the superintendent interviews were held in meetings that did not meet the legal requirements of 25-19-106, can the board legally vote to hire one of the candidates at the special call meeting taking place this evening?

Thank you.

Kimberly Wolfe, PhD
614.326.9318 (phone)

On May 26, 2023, at 8:02 AM, Lucas Harder <lucas@arsba.org> wrote:

Unfortunately, there's not a whole lot that can be done. A complaint could always be filed with the local prosecuting attorney but that's about it.

Lucas

-----Original Message-----

From: Dr. Kimberly Wolfe <kwolfe@wmsd.net>
Sent: Friday, May 26, 2023 8:00 AM



To: Lucas Harder <lucas@arsba.org>
Subject: Re: Illegal Board Meetings

Thank you. What can be done about the situation?

Kimberly Wolfe, PhD
614.326.9318 (phone)

On May 26, 2023, at 7:06 AM, Lucas Harder <lucas@arsba.org> wrote:

You are correct that the meetings would have been held without meeting the requirements under 25-19-106 as there would have needed to have been notice provided to the public and for the public to be able to attend the public portions of the meetings.

Lucas

-----Original Message-----

From: Dr. Kimberly Wolfe <kwolfe@wmsd.net>
Sent: Friday, May 26, 2023 4:58 AM
To: Lucas Harder <lucas@arsba.org>
Subject: Illegal Board Meetings

Hello, Lucas:

The West Memphis School Board met on May 24 and 25, at 5pm and 6:30 pm both days, to interview superintendent candidates. The meetings were not open to the public and the dates/times were not publicized. Although I am a board member, I did not participate in either meeting. Aren't these meetings a violation of FOIA Open Meeting Law, and Ark Code Ann 6~13~619?

I'm hearing that the board president is planning a special meeting to be held next Tuesday to actually vote to hire the person that 3/4 board members who participated want to hire. Everything about this process appears illegal and unethical based on what I've learned in ASBA trainings and independent research.

Please advise.

Thank you.

Kimberly Wolfe, PhD