

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF JEFFERSON

Application of JOHNSON NEWSPAPER CORPORATION,  
d/b/a Watertown Daily Times,

Petitioner,

for a judgment pursuant to Article 78 of the  
CPLR,

DECISION

v.

W. DOUGLAS HOWLAND, EUGENE J. PARKER, THE  
BOARD OF SUPERVISORS OF THE COUNTY OF  
JEFFERSON and THE COUNTY OF JEFFERSON,

Respondents.

APPEARANCES: BOND, SCHOENECK & KING  
S. Paul Battaglia, Esq., of Counsel  
Attorneys for Petitioner  
One Lincoln Center  
Syracuse, NY 13202

J. T. KING, ESQ.  
Jefferson County District Attorney  
Attorney for Respondents  
175 Arsenal Street  
Watertown, NY 13601

≡ MURPHY, J.:

By order to show cause dated April 22, 1982 petitioner  
above-named seeks a judgment pursuant to CPLR Article 78:  
(1), vacating and prohibiting enforcement of the oral decision  
of the County of Jefferson, its agents and employees, of  
April 16, 1982 declaring that all meetings of the Committee of  
the Jefferson County Board of Supervisors appointed on April 6,

1982, pursuant to Section 209 of the County Law, be closed, and the press and public excluded therefrom; (2), directing respondents to admit petitioner to all meetings of said committee held hereafter; (3), compelling respondents to supply to petitioner with copies of all minutes of meetings already held; (4), declaring that said subcommittee may not meet in executive session because its investigation does not involve matters which would "imperil the public safety" or otherwise fall within Public Officers Law §100; (5), awarding costs and disbursements of this proceeding, including reasonable attorneys' fees, together with such other and further relief as the Court may deem appropriate.

Petitioner alleges that it owns and operates the Watertown Daily Times, a newspaper of general circulation published daily in Watertown, New York, with circulation in Jefferson and surrounding counties. Respondent Eugene J. Parker is the Chairman of the Jefferson County Board of Supervisors and W. Douglas Howland is a member of that Board.

On April 6, 1982, the Jefferson County Board of Supervisors established a committee pursuant to Section 209 of the County Law to investigate "the Jefferson County Jail and Sheriff's Department". On April 10, 1982, after the resolution of the Board authorizing the investigation was passed, Board Chairman Eugene J. Parker appointed five supervisors to serve on the Committee.

The Committee held its first meeting on April 16, 1982, at which time W. Douglas Howland was elected Chairman of the Committee. Mr. Howland is also Chairman of the Judiciary Committee that sponsored the resolution for the investigation. At the Committee's first meeting, Jefferson County Attorney J. T. King, in response to an inquiry from the Committee, ruled that the Committee constituted a "quasi-judicial" body and that in his opinion, "all the meetings of this Committee can be closed".

Petitioner claims that after Mr. King issued this "opinion", the Committee met "behind closed doors", with press and public excluded, and conducted its business, including the election of W. Douglas Howland as Committee Chairman. Mr. King issued an opinion declaring that the Committee's meetings could be "closed", based upon his conclusion that the hearings constituted "quasi-judicial" hearings within the meaning of Public Officers Law §103.

It is petitioner's contention that respondents never voted to meet in "executive session" after a proper motion was made identifying the general area or areas of the subject or subjects to be considered within the specific scope of Public Officers Law §100. Petitioner contends that respondents' rulings and denial of access to the Committee hearings apply specifically and directly to them and their representatives and unless vacated will immediately and irreparably abrogate the rights guaranteed to petitioner and to the public at large.

In their answer to the petition and memorandum of law, respondents contend that a committee empowered under §209 of the County Law to investigate the conduct and performance of official duties of officers and/or employees at the Jefferson County Jail and the Jefferson County Sheriff's Department are exempt from the Open Meetings Law. Respondents claim that the enabling resolution authorizes an investigation of the conduct and performance of official duties of officers and/or employees of the Jefferson County Jail and the Jefferson County Sheriff's Department. Since the personnel records and testimony of witnesses pertaining to these records will necessarily be a major part of the investigation, respondents allege that they are clearly privileged under §50-A of the Civil Rights Act. They conclude that the public interest in such a sensitive investigation involving matters of great important public concern outweigh the public interest or right to have such meetings of the investigating officer or body open to the public.

After considering the order to show cause and supporting papers, the answer to petition, memoranda of law, oral arguments and after due deliberation, the Court grants petitioner's motion as modified by this opinion.

A "committee" of a "public body" is subject to the Open Meeting Law. Public Officers Law §97 defines a "meeting" as the "official convening of a public body for the purpose of conducting public business". The Court of Appeals in November

of 1978 found that 'meeting' included any situation in which a quorum of a public body convenes for the purpose of discussing public business whether or not there is an intent to take action and regardless of the manner in which a gathering may be characterized. (See Orange County Publications v. Counsel of the City of Newburg, 45 NY2d 947 [1978])

On October 1, 1979, the definition of "public body" was amended to mean:

"Any entity for which a quorum is required in order to conduct public business and which consists of two or more members performing a governmental function for the state or for an agency or department thereof, or for a public corporation as defined in §66 of the General Construction Law, or committee or subcommittee or other similar body of such public body."

The deliberations of the Board of Supervisors of the County "shall be public". (County Law §152(3), and Public Office Law §98) The deliberations of a committee of such a board, by Public Officers Law §97, are subject to the same requirement.

The resolution of the Jefferson County Board of Supervisors dated April 6, 1982, among other things, authorizes an investigation of the conduct and performance of official duties of officers and/or employees at the Jefferson County Jail and the Jefferson County Sheriff's Department. The resolution further

states "[t]hat said committee report back to the Chairman of the Board its progress and/or findings..."

This Court agrees with petitioner that the denial of access to the prior meeting of respondents' committee was invalid. However, the Court finds that it is possible that the subject matter under investigation may come under §100 of the Public Officers Law - Conduct of Executive Sessions. The matters stated to be under investigation may be the subject for an executive session.

The facts reveal that respondents did not act under Public Officers Law §100 to convene an "executive session" after following the procedure prescribed thereby to discuss a subject within its scope. "The very mechanism for an executive session in and of itself, suggests that the legislature wanted to provide for the possibility of a private working session in the absence of the public eye, but only under the express condition and enumerated purposes contained therein." (Orange County Publications Division of Ottoway Newspapers, Inc., v. Counsel of the City of Newburg, 60 AD2d 409 [2nd Dept., 1978])

This Court does not agree with respondents that their committee falls within Public Officers Law §103 which provides that the Open Meetings Law does not apply to "judicial or quasi-judicial proceedings, except to proceedings of the Public Service Commission". The resolution creating the Committee specifically stated that the Committee was to report back i

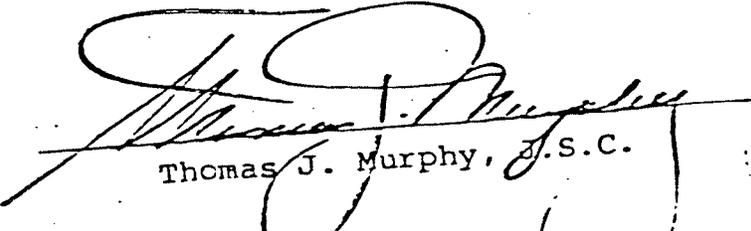
findings to the Legislature. Their function was not the same as e.g. in the case of Orange County Publications Division of Ottoway Newspapers, Inc., supra. In that case, the City Board of Zoning Appeals weighed evidence, applied the law thereto, weighed such other matters as or within the Board's discretion to consider and then reached a conclusion. Those functions were considered "quasi-judicial" in nature and thus could be conducted in private session.

"The test may be stated to be that action is judicial or quasi-judicial when, and only when, the body or officer is authorized and required to take evidence and all the parties interested are entitled to notice and a hearing, and, thus, the act of an administrative or ministerial officer becomes judicial and subject to review by certiorari only when there is an opportunity to be heard, evidence presented, and a decision had thereon." (See Matter of City of Albany, New York v. Jay Burch McMorran, 34 Misc2d 316 [Sup. Ct., Albany Co., 1962])

The minutes of the subject meetings must be disclosed. (In the Matter of Syracuse United Neighbors v. City of Syracuse, 80 AD2d 984 [4th Dept., 1981])

Submit an order in accordance with this decision.

Dated: July 27, 1982

  
Thomas J. Murphy, J.S.C.