

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE.

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Application of ORANGE COUNTY PUBLICATIONS, :
DIVISION OF OTTAWAY NEWSPAPERS, INC., :
Petitioner, : INDEX #5645/1982
- against - : MOTION DATE:
October 4, 1982
: MOTION CAL. #29
THE COUNCIL OF THE CITY OF NEWBURGH, :
Respondent. : DECISION
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TO:

✓ BECKER, CARD & LEVY, P.C.
Attorneys for Petitioner
141 Washington Avenue - P.O. Box 60
Endicott, New York. 13760

WILLIAM M. KAVANAUGH, ESQ.
Corporation Counsel of City of Newburgh
Attorney for Respondent
City Hall, 83 Broadway
Newburgh, New York. 12550

GREEN, J.

This is an Article 78 proceeding brought pursuant to Public Officers Law 102 to enforce the provisions of Article 78 of the New York State Constitution with respect to open meetings for the performance of public business in order that the citizens of the state be fully aware of and able to observe the performance of public officials; and attend and listen to the deliberations and decisions that go with the making of public policy. It is perceived as an effective means of permitting the people in a democratic society to remain informed if they are to retain control over those who are their public servants. Public Officers Law 95.

The material facts and circumstances underlying this proceeding appear not in dispute. The Respondent, having retained the American City Corporation of Columbia, Maryland (ACC), for a substantial fee, to prepare a development plan for the revitalization of the east end of the City of Newburgh in Orange County, did, during its council agenda session held on June 10, 1982, go into a closed session, and excluded the public including a reporter employed by Petitioner, after a motion to such effect was duly made and adopted. The disclosed purpose of the closed session was to discuss with ACC its preliminary redevelopment plan for the east end of the City and the various parcels of real property affected thereby. In its answering papers herein, the Respondent

described the purpose of the closed session this way:

"The purpose of this disclosure of the preliminary plan to the council was to get their reaction and comments to the plan so that American City could either proceed with that concept for development or change it to suit the desires of the council."

The Respondent essentially contends that the closed session for the above stated purpose was proper and did not violate the Open Meetings Law since the discussion included specific parcels of real property that would have to be acquired to implement the development plan. Since the plan was only tentative and not final, Respondent argues, properties adjoining those initially targeted for acquisition would increase in value and, in the event the City later decided to take such adjoining properties, it would have to pay the increased value for such adjoining or nearby properties. It was to avoid such consequences, the Respondent contends, that justified that the discussion be held in closed session.

Public Officers Law, Section 100, subd. h, expressly permits an executive or closed session of a public body for the purpose of a proposed acquisition of real property but only when publicity would substantially affect the value thereof.

The reliance by the Respondent upon such stated exception to the Open Meetings Law is misplaced. The subject closed session

held by Respondent was not for the narrow limited purpose defined in subdivision(h) of Public Officers Law 100. The closed session was purposed to discuss an entire development plan for a blighted area at the east end of the City of Newburgh in which all the citizens of Newburgh and the public generally have a vital interest as well as a right to be informed during every step of the decision-making process, which is a necessary preliminary to the formal decision and action. It has been pointed out by the Court in Orange County Publications v. Council of the City of Newburgh, 60 A D 2d 409, 415, that every thought as well as every affirmative act of a public official as it relates to and is within the scope of one's official duties is a matter of public concern; and it is the entire decision-making process that the Legislature intended to affect by the enactment of the Open Meetings Law. The discussion in closed session, therefore, of the preliminary redevelopment plan for the east end of the City of Newburgh was contrary to the expressed public policy of the Open Meetings Law and, particularly, violated Section 98 of said law.

The Respondent, in the Orange County Publications case, supra, was fully apprised with regard to the necessity for the Respondent to expose and lay bare its decision-making process with regard to the transactions of the public business within its scope of official duties. Statutes, as well as judicial decisions on

both the Federal and State levels, clearly demonstrate that the pervasive tendency for our public officials to attempt to function in secrecy is not in the best interests of our democratic society and will not be tolerated. Gossamer reasons for failure to comply with the Open Meetings Law will not suffice. No statutory exception or other excusable reason is demonstrated in this proceeding for the failure of the Respondent to comply with the Open Meetings Law despite the objection voiced, at that time, by Petitioner's newspaper reporter. Clearly, if choice of action there must be, the present climate in which public bodies are mandated to conduct their public duties requires that the choice be in favor of the open meeting and informed public.

Since this is not the first occasion on which the Respondent violated the Open Meetings Law and follows a prior violation which was the subject of an extensive and detailed review by the Appellate Division of the manner in which Respondent was to conduct its official business so as to comply with the Open Meetings Law, this Court finds it appropriate, if not imperative, to invoke the enforcement provisions of the statute (Public Officers Law 102) to underscore the serious need for compliance and deter future violations.

The Court, therefore, invokes subdivision 2 of Section 102 of the Public Officers Law authorizing the imposition upon

Respondent the payment to Petitioner of costs and reasonable attorney fees for the bringing of this proceeding which the Court fixes in the total sum of \$500.00.

Settle judgment.

Dated: March 4th, 1983.

A handwritten signature in cursive script, appearing to read "Irving A. Green", written over a horizontal line.

HON. IRVING A. GREEN
Acting Supreme Court Justice