

**STATE OF MINNESOTA
COUNTY OF BELTRAMI**

**IN DISTRICT COURT
NINTH JUDICIAL DISTRICT**

Case No. 04-CV-23-3320

C.T. Marhula,

Plaintiff,

ORDER

vs.

Michael Herbert, an individual; and
Lois Jenkins, an individual,

Defendants.

The above-entitled matter came on for a motion hearing and scheduling conference on April 10, 2024, before the Honorable Annie P. Claesson-Huseby, Judge of District Court, via Zoom videoconferencing.

James Dickey, Esq., appeared on behalf of Plaintiff. Andrew Wolf, Esq., appeared on behalf of both Defendants. Katie Nolting, Esq., Bemidji City Attorney, was also present.

The hearing was reported by Jodi Lundquist, 600 Minnesota Avenue N.W., Suite 108, Bemidji, Minnesota 56601.

Based upon the arguments of counsel, along with all files, records, and proceedings herein, the Court hereby makes the following:

ORDER

1. Defendant's Motion for Judgement on the Pleadings is **denied**.
2. The attached memorandum is incorporated by reference.

Let Judgment Be Entered Accordingly.

BY THE COURT:

Annie P. Claesson-Huseby
Judge of District Court

FACTUAL ALLEGATIONS – PROCEDURAL POSTURE

The Plaintiff claims that on August 17, 2022, Michael Herbert and Lois Jenkins (collectively, “Defendants”) were part of the Merit Hearing Board (“MHB”). The Plaintiff claims that the Defendants, as part of the MHB, violated the Minnesota Open Meeting Law (“OML”) when they held a meeting at which it conducted a disciplinary appeal hearing that was not open to the public. See Plaintiff’s Amended Complaint, filed March 21, 2024. Plaintiff further claims that the Defendants failed to electronically record the meeting. *Id.* Lastly, Plaintiff claims that the Defendants failed to provide public notice of the meeting. *Id.*

Defendants were personally served with a copy of the Summons and Complaint on December 4, 2023. Defendants filed and served their Answer on December 22, 2023. Defendants additionally filed a Notice of Motion and Motion for Judgment on the Pleadings on March 13, 2024, along with a supporting Memorandum of Law. The parties filed a stipulation which allowed the complaint to be amended on March 21, 2024. The amendment allowed the Plaintiff to amend his complaint “consistent with the draft provided to Defendant.” See Stipulation to Amendment of Complaint, filed March 21, 2024. One week later, on March 28, 2024, Plaintiff filed a Memorandum of Law in Opposition to Defendant’s Motion for Judgment on the Pleadings. Defendants filed a reply to the Plaintiff’s Memorandum on April 4, 2024.

The Defendants’ Motion for judgment on the pleadings was argued on April 10, 2024, in front of the undersigned Judge of District Court. Following the hearing, the Court took the matter under advisement.

STANDARD OF REVIEW

The motion before the Court is a motion for judgment on the pleadings. When reviewing a motion for judgment on the pleadings, the Court considers “whether the complaint sets forth a

legally sufficient claim for relief.” *Sec. Bank & Tr. Co., v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 916 N.W. 2d 481, 495 (Minn. 2018). This is the same standard applicable in a motion to dismiss. *Abel v. Abbot NW Hosp.*, 947 N.W. 2d 58, 64 n2 (Minn. 2020). In applying this standard, the Court considers only the facts alleged in the complaint and must accept those facts as true. *Sipe v. STS Mfg. Inc.*, 834 N.W. 2d 683, 868 (Minn. 2013); *N. States Power Co. v. Minn. Metro. Council*, 684 N.W. 2d 485, 490 (Minn. 2004). The Court must also view the allegations in the complaint in the light most favorable to the non-moving party, in this case the Plaintiff. *Hoffman v. N. States Power Co.*, 764 N.W. 2d 34, 42 (Minn. 2009).

The District Court must limit its review on a motion to dismiss/judgment on the pleadings to those set forth in the complaint or the motion shall be treated as one for summary judgment under Rule 56. *N. States Power Co. v. Minn. Metro. Council*, 684 N.W. 2d at 490. “A claim is legally sufficient if it is possible on any evidence which must be produced . . . to grant the relief demanded.” *State by Smart Growth Mpls. v. City of Mpls.*, 954 N.W. 2d 584, 597 (Minn. 2021).

MEMORANDUM

OPEN MEETING LAW

The open meeting law (“OML”), Minn. Stat. §§ 13D.001-08, states that “all meetings, including executive sessions, must be open to the public.” See 13D.01. The OML was enacted for public benefit and Appellate Courts have held that it should be liberally construed. *Sovereign v. Dunn*, 498 N.W. 2d 62, 66 (Minn 1993) (citing *St. Cloud Newspapers, Inc., v. District 742 Community Schs.*, 332 N.W. 2d 1, 4-5 (Minn. 1983)). The OML “is designed to avoid secret meetings, to allow the public to be informed about public officials’ decision making, and to allow members of the public to present their views to their public officials.” *Brainerd Daily Dispatch v. Dehen*, 693 N.W. 2d 435, 442 (Minn. App. 2005). The OML extends not only to the governing

body of a statutory or home rule charter city, but to “any committee, subcommittee, board, department, or commission of the “public body.” See Minn. Stat. 13D.01, Subd. 1(b)(4) and (c)(1)-(5).

“The test for determining whether a particular meeting is subject to the OML was established in *Moberg v. Independent Sch. Dist. No. 281*, 336 N.W. 2d 510, 518 (Minn. 1983).” *Sovereign*, 498 N.W. 2d at 66. The Minnesota Supreme Court held that meetings subject to the OML are those gatherings where a quorum of the governing body, or a quorum of a board thereof, discuss, decide, or receive information as a group on issues relating to the official business of that governing body.” *Moberg v. Independent School Dist. 281*, 336 N.W. 2d at 518. The quorum requirement reflects the Minnesota Supreme Court’s unwillingness to subject gatherings to the OML where the group lacks the power to “actually transact business.” *Sovereign*, 498 N.W. 2d at 66 (quoting *Minnesota Daily v. Univ. of Minn.*, 432 N.W. 2d 189, 193 (Minn. 1988)).

APPLICABILITY OF THE OML TO THE MERIT HEARING BOARD

The complaint in this case alleges that the MHB is a board of the public body, the public body being the City of Bemidji. See Complaint, page 2, ¶ 14. The complaint alleges that the MHB “is a board created by the City Council via the City of Bemidji, Minnesota, Code of Ordinances.” See Complaint, page 2, ¶ 13; City of Bemidji, Minnesota, Code of Ordinances (“Bemidji Code”) § 2-326(a). The Complaint further alleges that the Bemidji City Code states that the MHB has “the power to confirm or reverse the action of the removing officer and reinstate the employee removed with or without pay from the time of his removal,” as well as “the power to either order, or recommend, such disciplinary action as in its judgment may be deemed advisable, including suspension without pay, the removal of employee for any period not exceeding six (6) months or

reduction in status or classification of the employee.” See Complaint, page 5-6 ¶ 40; Bemidji Code § 2-328(i).

The OML states that “[a]ll meetings, including executive sessions, must be open to the public (a) of a state (1) agency, (2) board, (3) commission or (4) department; (b) the governing body of a . . . (4) statutory or home rule charter city, . . . (c) of any (1) committee, (2) subcommittee, (3) board, (4) department or commission of a public body; and (d) the governing body or committee of: (1) a statewide public pension plan . . . ; or (2) local public pension plan . . .” Minn. Stat. § 13D.01, Subd. 1. The Plaintiff argues that the MHB is subject to the OML as it is a “board” of the “public body.” See Complaint, pg. 2-3 ¶¶ 14 and 15. The Defendants argue that the MHB is not subject to the OML as it does not fit within any of the categories listed in Minnesota Statute 13D.01, Subdivision 1. See Defendant’s Memorandum of Law, pages 4-5 (noting that the only category in which the MHB could conceivably fit would be under Minn. Stat. 13D.01, subd. 1(c)(3) “any . . . board of a public body.”).

The OML does not define the term “public body.” See Minn. Stat. §§ 13D.001-08; *see also Star Tribune Co. v. Univ. of Minn. Bd. Of Regents*, 683 N.W. 2d 274, 280 (Minn. 2004). When the legislature does not provide a definition for term or phrase, the Court is left to interpret the meaning as “[s]tatutory interpretation is a question of law for the Cour to decide.” *Graphic Commc’ns Loc. 1B Health & Welfare Fund A v. CVS Caremark Corp.*, 850 N.W. 2d 682, 689 (Minn. 2014).

“In statutory construction, words are to be given their common meaning.” *Star Tribune Co. v. Univ. of Minn. Bd. Of Regents*, 683 N.W. 2d at 280 (citing Minn. Stat. 645.08 (1)). The Minnesota Supreme Court has noted that “[i]n common understanding, ‘public body’ is possibly the broadest expression for the category of governmental entities that perform functions for the public benefit.”

Id. The Minnesota Supreme Court went on to note that the OML was enacted for public benefit, and therefore the Courts construe it in favor of public access. *Id.* (citing *State by Archabal v. County of Hennepin*, 505 N.W. 2d 294, 297 (Minn. 1993)). This Court finds that the MHB is a board of the public body.

When reviewing a motion for judgment on the pleadings, the Court considers “whether the complaint sets forth a legally sufficient claim for relief.” *Sec. Bank & Tr. Co., v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 916 N.W. 2d 491, 495 (Minn. 2018). In applying this standard, the Court considers only the facts alleged in the complaint, which includes documents referenced in the complaint, and must accept those facts as true. *Sipe v. STS Mfg. Inc.*, 834 N.W. 2d 683, 868 (Minn. 2013); *N. States Power Co. v. Minn. Metro. Council*, 684 N.W. 2d 485, 490 (Minn. 2004). The Court must also view the allegations in the complaint in the light most favorable to the non-moving party, in this case the Plaintiff. *Hoffman v. N. States Power Co.*, 764 N.W. 2d 34,42 (Minn. 2009).

Based upon the information contained in the complaint, the Minnesota Supreme Court’s notation that “‘public body’ is possibly the broadest expression for the category of governmental entities that perform functions for the public benefit,” and the Minnesota Supreme Court’s guiding principal that the OML should be construed to favor public access, this Court finds that the Plaintiff has pled sufficient facts that the MHB is a “board” of a “public body” and therefore subject to the OML to withstand a motion for judgment on the pleadings.

ALLEGED VIOLATION – COUNT I FAILURE TO HOLD AN OPEN MEETING

The general principle behind the OML is that meetings may not be closed. Minn. Stat. § 13D.05, subd. 1. The OML recognizes, however that there are some situations when a meeting may or must be closed. See *Id.* subd. 2 and 3. The OML mandates for example, that meetings be closed if “internal affairs data relating to allegations of law enforcement personnel misconduct

collected or created by a . . . political subdivision” are discussed. Minn. Stat. § 13D.05, subd. 2(a)(3). The phrase “law enforcement personnel,” includes an individual who are employed by an agency that carries on law enforcement functions, including but not limited to “municipal police departments,” and “fire departments.” Minn. Stat. ¶ 13.82, subd. 1.

The subject of the August 17, 2022, MHB meeting was William Batchelder. See Complaint, page 6, ¶ 46. Mr. Batchelder was an employee of the City of Bemidji, employed as a paid on-call firefighter in the city’s fire department, and he was appealing a reprimand he received as an employee of the City of Bemidji Fire Department. *Id.* at ¶¶ 47 and 48. Thus, the Defendants argue that the OML mandated that Mr. Batchelder’s MHB hearing be closed. The Plaintiff argues that because the subject of the meeting, Mr. Batchelder requested that his hearing be open to the public, and his request was refused, a violation of the OML occurred. *Id.* at ¶¶ 49-60.

Minnesota Statute Section 13D.05, Subdivision 2(a) states in part that “[a]ny portion of a meeting must be closed . . . if the following types of data are discussed: (2) . . . internal affairs data relating to allegations of law enforcement personnel misconduct . . .” Minnesota Statute Section 13D.05, Subdivision 2(b) goes on to state , however, that “[a] meeting must . . . be open at the request of the individual who is the subject of the meeting.”

In reviewing a motion for judgment on the pleadings, the Court considers “whether the complaint sets forth a legally sufficient claim for relief.” *Sec. Bank & Tr. Co., v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 916 N.W. 2d 491, 495 (Minn. 2018). In applying this standard, the Court considers only the facts alleged in the complaint, which includes documents referenced in the complaint, and must accept those facts as true. *Sipe v. STS Mfg. Inc.*, 834 N.W. 2d 683, 868 (Minn. 2013); *N. States Power Co. v. Minn. Metro. Council*, 684 N.W. 2d 485, 490 (Minn. 2004). The Court must also view the allegation in the complaint in the light most favorable to the non-moving

party. *Hoffman v. N. States Power Co.*, 764 N.W. 2d 34,42 (Minn. 2009). Based upon the information in the complaint, the Plaintiff has pled sufficient facts that the MHB violated the OML when they failed to open a meeting at the request of the subject of the meeting to withstand a motion for judgment on the pleadings.

ALLEGED VIOLATION – COUNT II FAILURE TO ELECTRONICALLY RECORD

Count II alleges that the Defendants violated the OML by failing to electronically record Mr. Batchelder’s merit hearing. See Complaint, pg. 10, ¶¶78-82. Minnesota Statute Section 13D.05, Subdivision 1(d) states that [a]ll closed meetings, . . . must be electronically recorded at the expense of the public body.” The complaint alleges that the MHB meeting on August 17, 2022, was recorded stenographically, but was not electronically reported.

In reviewing a motion for judgment on the pleadings, the Court considers “whether the complaint sets forth a legally sufficient claim for relief.” *Sec. Bank & Tr. Co., v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 916 N.W. 2d 491, 495 (Minn. 2018). In applying this standard, the Court considers only the facts alleged in the complaint, which includes documents referenced in the complaint, and must accept those facts as true. *Sipe v. STS Mfg. Inc.*, 834 N.W. 2d 683, 868 (Minn. 2013); *N. States Power Co. v. Minn. Metro. Council*, 684 N.W. 2d 485, 490 (Minn. 2004). The Court must also view the allegation in the complaint in the light most favorable to the non-moving party. *Hoffman v. N. States Power Co.*, 764 N.W. 2d 34,42 (Minn. 2009). Based upon the information in the complaint, the Plaintiff has pled sufficient facts that the MHB violated the OML when they failed to electronically record their closed meeting on August 17, 2022, to withstand a motion for judgment on the pleadings.

ALLEGED VIOLATION – COUNT III FAILURE TO PROVIDE NOTICE

Count III of the Plaintiff's Complaint alleges that the Defendants violated the OML by failing to provide public notice of the MHB meeting on August 17, 2022. See Complaint, page 11, ¶¶ 83-93. The OML requires public bodies provide notice of meetings. See Minn. Stat. § 13D.04. Minnesota Statute Section 13.04, Subdivision 5 states that “[t]he notice provisions of this section apply to closed meetings.”

The Plaintiff's Complaint alleges that the MHB does not hold regularly scheduled meetings, and that the MHB meeting on August 17, 2022, was a “special meeting.” See Complaint, page 11, ¶¶ 84 and 85. The Complaint alleges that “no notice was given” of the meeting. See *Id.* ¶ 89. The Defendants allege that the MHB is not a public body and therefore it was not their responsibility to provide notice of their meetings.

In reviewing a motion for judgment on the pleadings, the Court considers “whether the complaint sets forth a legally sufficient claim for relief.” *Sec. Bank & Tr. Co., v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 916 N.W. 2d 491, 495 (Minn. 2018). In applying this standard, the Court considers only the facts alleged in the complaint, which includes documents referenced in the complaint, and must accept those facts as true. *Sipe v. STS Mfg. Inc.*, 834 N.W. 2d 683, 868 (Minn. 2013); *N. States Power Co. v. Minn. Metro. Council*, 684 N.W. 2d 485, 490 (Minn. 2004). The Court must also view the allegation in the complaint in the light most favorable to the non-moving party. *Hoffman v. N. States Power Co.*, 764 N.W. 2d 34,42 (Minn. 2009). Based upon the information in the complaint, the Plaintiff has pled sufficient facts that the MHB violated the OML when they failed to provide notice of their meeting on August 17, 2022, to withstand a motion for judgment on the pleadings.

INTENT TO VIOLATE OML

The OML indicates that “[n]o monetary penalties or attorney fees may be awarded against a member of a public body unless the court finds that there was an intent to violate this chapter.” See Minn. Stat. § 13D.06, subd. 4(d). The only question on review of a judgment on the pleadings is whether the complaint sets forth a legally sufficient claim for relief. *Matter of Trusts by Hormel*, 543 N.W. 2d 668, 671 (Minn. App. 1996) (citing *Elzie v. Comm. of Pub. Safety*, 298 N.W. 2d 29, 32 (Minn. 1980)). A party’s intent is a question of fact, and when a question of fact exists, the Court should not order judgment on the pleadings. *State v. Rivers*, 787 N.W. 2d 206, 209 (Minn. App. 2010); *Matter of Trusts by Hormel*, 543 N.W. 2d 668, 671 (Minn. App. 1996) (citing *State v. ex rel Mpls. v. Mpls. St. Ry.*, 56 N.W. 2d 564, 568 (Minn. 1952)).

CONCLUSION

For the reasons noted above, Defendant’s Motion for Judgment on the Pleadings must be and hereby is **denied**.

APCH